TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 172.

THE NEW ORLEANS GAS LIGHT COMPANY, PLAINTIFF IN ERROR,

vs.

THE DRAINAGE COMMISSION OF NEW ORLEANS, THE SEWERAGE AND WATER BOARD, SUCCESSOR, SUBSTITUTED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JANUARY 18, 1904.

(12,135.)

(19,195.)

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

THE NEW ORLEANS GAS LIGHT COMPANY, Plaintiff in Error,
versus
THE DRAINAGE COMMISSION OF NEW ORLEANS, THE Sewerage and Water Board, Successor, Substituted, Defendant in Error. } No. 13897.

Messrs. Buck, Walshe & Buck, for plaintiff in error.
Messrs. Howe, Spencer & Cocke and Omer Villeré, for defendant in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty days (30) from the fourteenth day of December, A. D. 1903.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Stamp.

NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 60609. Civil District Court, Division "E."

Petition of Plaintiff.

Filed November 3rd, 1899.

To the honorable the judges of the civil district court in and for the parish of Orleans, State of Louisiana:

The petition of the New Orleans Gaslight Company, a corporation duly created and existing by virtue of special laws of this State as hereinafter more fully set forth, herein suing by A. H. Sieward, its president, with respect shows:

That the Drainage Commission of New Orleans, a body corporate, created and existing under and by virtue of the laws of the State of Louisiana, particularly act No. 114 of the Acts of the Session of the Legislature of 1896, and acts amendatory thereof, having its domicile

in the city of New Orleans, parish of Orleans, and whereof R. H. Walmsley is president, is justly and legally indebted unto your petitioner in the full sum of four thousand and sixty-five and
2 58/100 dollars, being balance due of a total indebtedness of sixty five hundred and forty six and 96/100 dollars on account of which the sum of twenty four hundred and eighty-one and 38/100 — has been paid as per Exhibit A annexed and filed herewith as part of this petition, to which further reference will be made hereinafter.

And your petitioner shows and avers that said indebtedness accrued and said sum became due to petitioner for the reasons and in the manner following, to-wit:—

That your said petitioner The New Orleans Gaslight Co. in the various acts passed by the legislature of this State, particularly act No. 97 of the Acts of 1870, approved April 20th, of said year: and act No. 106 of the Acts of 1873, approved July 10th of said year, and acts amendatory thereof all of which constitute the charter of your petitioner, your petitioner was granted the exclusive right and privilege of making and selling gas for illuminating and other purposes in the city of New Orleans for a certain period, fixed, expiring in the year 1925: and for that purpose was specially authorized by various provisions in said legislative enactments, more especially in section 9 of said act of April 20th, 1870, to construct and lay through the streets, alleys and ways of the city of New Orleans mains, pipes and conduits at its own expense as same might be required for the conduct of its business or for the purpose of carrying out the objects of said charter.

Petitioner shows that the business of making and selling illuminating gas and delivering same for consumption could not possibly be carried on in any other way or manner and the laying of such mains pipes and conduits was and is an absolute necessity to the conduct of the business and the carrying out of the objects for which your petitioner was incorporated by the laws of this State.

Petitioner shows that it has regularly, uninterruptedly and without interference by any private or public authority exercised the rights thus granted and has laid and constructed at great ex-
3 pense a large, valuable and extensive system of mains pipes and conduits in and through nearly every street of this city, with service connections in and to houses where gas is consumed through which said gas is delivered for consumption and use.

And your petitioner avers that its said charter is a solemn and binding contract between itself and the State and people of Louisiana: and all the rights, privileges and immunities conferred therein protected from all impairment both by the law and constitution of the State of Louisiana and by the Constitution of the United States as will hereinafter more specifically — set forth.

And now your petitioner further shows that the defendant herein through its agents and officers acting under and by virtue of said act No. 114 of the Acts of 1896 entitled "An act to provide for the

drainage of the city of New Orleans to establish the Drainage Commission of New Orleans and to provide ways and means and funds for such drainage: to provide for the issue and payment of bonds: and to direct the co-operation of the board of commissioners of the Orleans levee district" in carrying out or attempting to carry out the functions and duties imposed upon it by said act, has interfered with, molested, injured and damaged the mains, pipes, conduits and works of your petitioner, causing it pecuniary loss and injury in the amounts hereinabove set forth and more specially detailed in the exhibit herewith filed.

That it claims under said legislation to have authority to establish and construct drainage canals of its own device and at its own will in any and all the streets and public ways and places in the city of New Orleans where the pipes, mains and conduits of plaintiff have been heretofore legally and under proper authority located and installed and to give such dimensions and section to such canals as it may choose without any regard to the rights or property of plaintiff or others: and has so located and constructed canals
4 on streets and places where the pipes and mains of plaintiff are situated.

Your petitioner shows that said drainage commission through its officers and agents in view of the alleged public character of its work asserts as matter of law the right to invade and damage the property of your petitioner without incurring any liability for compensation for the injury done.

That sometime in the month of August, 1898, as the work of said commission progressed it first came in conflict and contact with the mains of petitioner: and your petitioner was notified to remove its mains and pipes at its own expense to permit the drainage work to proceed or they the officers and agents of said drainage commission, alleging their right on the ground hereinabove set forth threatened to do so themselves.

Petitioner shows that through its officers and employees it refused to comply with the request to change or remove the mains and pipes, etc., upon the ground, first: that its property could not be interfered with under any conditions in the manner threatened for any cause or reason whatsoever: and, secondly, that if it were true as matter of law that the objects for which the drainage commission was created and the works which it had to construct involved the exercise of an act of a high public nature which would authorize the taking or damaging of private property, that such taking or injuring could not be consummated without compensation duly and previously made. And this contention led to an understanding between the parties that in view of the difficulty and hazardous nature of the work and the technical knowledge and skill requisite to its proper execution, plaintiff herein, The New Orleans Gaslight Co. would do the work complained to be necessary change its mains, pipes and conduits in conformity with the plans made by the engineers of the drainage commission, keep a full and accurate account

of the actual cost of such work, and that it, the drainage commission, would pay such costs.

That upon these terms and conditions changes and alterations were made beginning with Aug. 13th, 1898, correct accounts
5 kept and bills rendered, and on the 31st day of July 1899, the defendant, The Drainage Commission, paid to plaintiff on account of work done under said arrangement the sum of $2481.38—duly credited on the account.

Petitioner shows that the defendant however, thereafter and before such payment had been made asserted that it only made such payment by reason of the positive promise and agreement previously entered into: that it would make no further payments and recognized no further liability for the reasons hereinabove set forth; namely, that it had the absolute right to execute the drainage work according to the terms of the law without reference to the rights of your petitioner and without incurring liability in any manner for the injury which it might be compelled to inflict in the prosecution of its work.

Your petitioner shows that it at all times insisted upon its rights in the premises and threatened to stop the progress of the work of the drainage commission by appealing to the courts of the country for writs of injunction to protect it in the peaceable and undisturbed possession, use and enjoyment of its property.

Whereupon again considering the great public interest involved and for the reasons above set forth of the danger of permitting any break of interference with the pipes and mains of the plaintiff except by its own experience- and skillful workmen, it was agreed without prejudice to the rights of petitioner that it would continue to make changes in the location and construction of its pipes and mains when notified to do so, the officers and agents of the drainage commission keep account of the expenses and that the question of liability be submitted for adjudication to the courts of justice.

That under this agreement your petitioner did continue to make changes and alterations, keeping account of the expense with full statement of nature and extent of work, date when done, place where, etc. up to and including the 18th of Oct. 1899—which
6 is fully set forth in Exhibit A already annexed and filed herewith and now specially referred to for further certainty as a full and complete account of work done under the conditions above set forth and the cost thereof to your petitioner; showing after crediting same with the amount paid as hereinabove admitted, a balance due of four thousand and sixty-five and 58/100 dollars.

Now your petitioner shows that the said drainage commission, defendant, is responsible to petitioner as aforesaid for the reasons:

First. That your petitioner is informed and believes that the interference with and injury to the works of petitioner were not absolutely necessary and the works of the drainage commission could have been constructed without inflicting the loss and damage complained of.

Second. If such work was necessary in the interest of a public work, still acts done and rights claimed under pretended authority of said act No. 114 of the Acts of Session of 1896 by the defendant impair the obligation of the contract between the plaintiff and the State of Louisiana in violation of article 1 section 10 of the Constitution of the United States; and of act 166 of the constitution of this State; or said acts are and constitute a taking and damaging of private property for a public purpose which carries with it and imposes the legal obligation to make just and adequate compensation for the injury inflicted by such taking or damaging.

And petitioner shows that section 8 of said act No. 114—which purports to give to said drainage commission the right to expropriate property—vests all the power and obligations of the State itself, in this regard, in said drainage commission, and imposes on said — commission liability for property expropriated or damaged: and in so far as said section 8 confers a "right in all streets" in the city of New Orleans: such "right" must be held to have been conferred subject to prior grants: and to the extent that this may be denied and absolute right claimed—said section 8
7 especially is as to petitioner null, void and unconstitutional under said art. 1, section 10, Constitution of the United States, and art. 166 of the State constitution.

Plaintiff avers that it has made amicable demand on the defendant for the payment of the amount claimed, and payment has been refused.

Wherefore plaintiff prays that defendant, The Drainage Commission of New Orleans through its proper officer may be cited to appear and answer this petition, and after due proceedings there be judgment condemning said drainage commission to pay to petitioner the full sum of four thousand and sixty five and 58/100 dollars with legal interest from judicial demand until paid, and all costs of this suit: and petitioner reserves all legal rights and remedies to either resist further loss or damage or to recover as herein the amount thereof.

And it prays for such other and further aid, remedy and relief as the nature of the case may require and law and equity permit.

(Signed) BUCK, WALSHE & BUCK, *Att'ys.*

EXHIBIT "A."

Statement of the New Orleans Gas Light Company, Annexed to and Made Part of Petition.

Filed November 3rd, 1899.

NEW ORLEANS, *October 18th*, 1899.

The Drainage Commission of New Orleans and the National Contracting Co. to the New Orleans Gas Light Co., Dr.

8

1899.				
Aug.	13.	Labor repairing services on St. Louis from Romain to Claiborne St.	$1.50	
"	20.	Labor repairing services on St. Louis from Romain to Claiborne St.	2.00	
"	27.	Labor repairing services on St. Louis from Romain to Claiborne St.	3.50	
Sept.	3.	Labor repairing services on St. Louis from Romain to Claiborne St.	2.15	
Sept.	3.	Labor repairing service cor. St. Louis & Villere Sts.	4.00	
"	"	Labor cutting off 4" main cor. St. Louis & Villere Sts.	7.75	13.15
"	10.	Labor cutting off 4" main cor. St. Louis & Villere Sts.	8.25	
"	24.	Labor straight-ning 6" main Claiborne & St. Louis Sts.	3.50	
"	"	Cutting of 3" main St. Louis & Claiborne Sts.	4.00	
"	30.	Labor repairing 6" main on Marias & St. Louis Sts.	30.40	23.50
		12 ft. 6" pipe 36c.	4.32	
		1 double branch 6 x 4 133 lbs. 4c.	5.32	
		15 lbs. lead 5½c.	83	
		4 lbs. yarn 11c.	44	
		8 blocks 2c.	16	
		1 1¼ brass plug	26	
		Cartage 4 loads 75c.	3.00	
"	30.	Service moved from St. Louis 501 Villere 9 ft. ¾ lead pipe 11c.	90	44.73
		6 ft. ¾ W. I. pipe 6¼c	38	
1-¾ brass cock			1.13	
1-¾ " bend			46	
1¾ square "			19	

9

1-¾ spring "			20	
1-¾ male connection			39	
1-¾ female connection			28	
1-¾ mall elbow			04	
			$3.97	$81.38
1898.				
Sept.	30.	Amount forward	3.97	81.38
Sept.	30.	1-1 x ¾ brass bushing	68	
		10 ft. cypress lumber 3½	35	
		2 loads breeze 25c.	50	
		Cartage	4.00	
Oct.	1.	Labor putting in service Villere & St. Louis.		9.50
"	8.	Examining mains & locating traps, Villere bet. St. Louis & Toulouse.		4.00
"	"	Labor putting in syphon at St. Louis & Villere Sts.	3.00	6.65
		2 ft. ¾ lead pipe 11c	22	
		13 " ¾ iron pipe 6¼	81	

		2-¾ brass bends 46c		92	
		4-¾ square " 20c		80	
		1-¼ brass plug		11	
		2-¾ couplings 9c		18	
		3-1" brass plugs 20		60	
		1 small syphon pot 194 lbs. 4c		7.76	
					14/40
"	"	Labor putting in syphon, at St. Louis and Basin Sts.		5.00	
		1 small syphon pot 195 lbs. 4c		7.80	
		1 ft. ¾ lead pipe		11	
		7 " ¾ iron " 6½c		44	
		1 ft. ¾ brass bend 46c		46	
		4-¾ square " 20		80	
		1-¾ " brass plug		11	
		1-¾ brass female connection		28	
		1-1 x ¾ long brass bushing		69	
		1-1½ x 1¼ short brass bushing		41	
					16.10
10					
"	"	Labor cutting off 4" main St. Louis & Basin Sts			3.00
"	29.	Labor putting syphon at Marias & St. Louis Sts.		4.00	
		1 ft. 1¼ iron pipe		16	
		1 " 1" " "		09	
		11 " ¾" " 6½c		69	
				4.94	$135.03
Oct.	29.	Amounts forward		$4.94	$135.03
"	"	1-1" spring bend		29	
"	"	4-¾ square " 19		76	
"	"	2-¾ spring " 20		40	
"	"	1-¾ elbow		04	
"	"	1-1¼ x 1¼ reducer		15	
"	"	1-1 x ¾ "		06	
"	"	Cartage		1.00	
					7.64
"	30.	Laying new lay—by on S. W. Claiborne & Canal in place of the old one on Canal & Claiborne to make room for drainage canal 84 ft. of 20" pipe 2 15		180.60	
		108 ft. of 6" pipe 40c		43.20	
		99 " " 4" " 30c		29.70	
		2 single branches 4 x 4 216 lbs. 4c		8.64	
		1 reducer 20 x 6 180 lbs. } 1 " 20 x 4 138 " } 318 lbs. 4½c		14.31	
		1-6" sleeve 52 lbs. 4c		2.08	
		1-6 " bend 133 lbs. } 1-4" " " 186 " } 402 lbs. 4c 1-4" bend 83 lbs. }		16.08	
		2-4" caps 24 lbs. 4c		96	
		1-4" Chapman valve		18.25	
		1-3 x 2 brass reducer		3.38	
		499 lbs. lead 5½c		27.44	
		24 " yarn 11c		2.64	
11		3079 ft. lumber bracing & foundation 10.00		30.79	
		114 blocks 2c		2.28	
		6 bbls. coke 30c		1.80	
		2-2" brass plugs 68c		1.36	
		2-1½" brass plugs 31c		62	
		Wagers of pavers		39.75	
		98 new brick 8.00		78	
		¼ bbl. Portland cement 3.00		1.50	
		1 " sand		30	
		4 loads breeze 25		1.00	
		Amount forward		$427.46	$142.67

1898.					
Oct.	30.	Amount forward			$142.67
"	"	Cartage 40 loads		20.00	
		Wages of bricklayers		1.40	
		Wages of laborers, engineer & foreman		411.20	
					860.06
Nov.	5.	Labor relaying & leveling 6" main Marias & St. Louis Sts			18.75
"	"	Labor putting syphon at Canal & Basin Sts		4.00	
		11 ft. ¾ iron pipe 6¼c		69	
		1-¾ spring bend		20	
		2-¾ malleable bend 4½c		09	
		4-¾ iron couplings 9½		38	
		1-1¼ x ¾ brass bushing		37	
					5.73
"	12.	Labor making connection with 16" & 4" main Canal & Basin Sts		6.00	
		11 ft. of 1½" lead pipe 25c		2.75	
		2-¾ male brass connections 39c		78	
		17 ft. cypress lumber 3½c		60	
					10.13
Dec.	17.	Labor cutting of 3" main Customhouse & Basin Sts.		7.00	
"	"	Labor looking after 12" main Burgundy & Canal Sts.		3.00	
					10.00
12					
"	24.	Labor cutting of 4" main cor. Canal & Basin Sts. & locating mains Canal & Basin & Canal & Dauphine Sts			14.00
"	27.	Labor relaying 4" main on Bienville crossing Basin drainage canal		14.00	
		1 pipe hanger & stringer 35 lbs.		1.05	
		10 blocks 2c		20	
		Cartage 3 loads		1.50	
					16.75
		Amount forward			$1088.09
1898.					
Dec.	27.	Amount forward			1088.09
"	29.	Labor relaying 4" main on Conti crossing Basin street drainage canal		31.25	
		24 ft. 4" pipe 30		7.20	
		1-4" sleeve 30 lbs. 4c		1.20	
		2 pipe hangers & stringers 60 lbs. 3c		1.80	
		24 lbs. lead 5½c		1.32	
		4 lbs. yarn 11c		44	
		15 blocks 2c		30	
		2-1" brass plugs 20c		40	
		Cartage 5 loads		2.50	
					46.41
1899.					
Jan'y	7.	Labor locating and watching 4" main cor. Canal & N. Rampart Sts			4.50
"	14.	Labor locating & watching 12" main on Burgundy & Canal Sts		10.50	
Jan'y	14.	Labor locating and marking off 6" main on Royal & Canal Sts		3.75	
					14.25
"	"	Labor raising & changing 16" main Canal & Basin Sts		5.15	
"	"	Labor staking off 16" main & 20 main at Perdido & Basin Sts		8.30	
					13.45

13

Jan'y 21.	Labor locating & watching on Canal & Dauphine Sts		6.50	
" "	Labor straightening & hanging 12" main, Canal & Burgundy Sts		5.50	
" "	Labor locating & staking off 6" x 12" main on Canal & Chartres Sts		8.00	
				20.00
" 28.	Labor locating & watching 6" main Canal & Royal Sts		17.00	
" "	Labor locating & staking off 6" main Canal & Camp Sts		12.00	
				29.00
" 31.	For loss on sales of gas on St. Louis bet. Romain & Basin Sts. from Sept. 15th 1898 to Jan'y 31st 1899, 4½ months at $20.00			90.00
	Amount forward			$1305.70
1899.				
Jan'y 31.	Amount forward			1305.70
Feb'y 1.	Labor repairing 6" main on neutral ground Canal cor. Camp St		5.00	
	4 ft. of 6" pipe 40c		1.60	
	1-6" sleeve 52 lbs. 4c		2.08	
	25 lbs. lead 5½c		1.31	
	5 " yarn 11c		55	
Feb'y 1.	2-1¼" brass plugs 26c		52	
	Cartage		1.00	
				12.06
" 3.	Labor raising and straight-ning 6" main on neutral ground across Canal St. from Chartres to Camp St.			11.00
" 4.	Labor watching & locating 12" mains at Camp & Canal & Chartres Sts			33.00
" 28.	For loss on sales of gas on St. Louis bet. Romain & Basin Sts. for month of Feb'y 1899			20.00

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Mar. 4.	Labor relaying 6" main on Customhouse crossing Claiborne drainage canal		33.25	
	5 blocks 2c		10	
	Cartage 2 loads		1.00	
				34.35
" "	Labor staking off & locating main Bienville & Chartres Sts			2.50
" 18.	Labor locating & staking off 6" & 3" mains Conti & Chartres Sts		3.25	
" "	Labor watching 3" main Bienville & Chartres Sts		5.00	
				8.25
" 31.	Labor relaying 3" main on Customhouse crossing Basin		27.75	
	60 ft. of 3" pipe 26c		15.60	
	1-3" sleeve 14 lbs. 4c		56	
	2 lbs. lead 5½c		11	
	3 " yarn 11c		33	
	40 ft. lumber 10.00		40	
	Amounts forward		$44.75	$1426.86
Mar. 31.	Amounts forward		$44.75	$1426.86
" "	15 blocks 2c		30	
Mar. 31.	2-1" bras- plugs 20c		40	
	Labor paving		10.00	
	Cartage 7 loads 50c		3.50	
	2 pipe hangers 1.25		2.50	
				61.45

Mar.	31.	For loss on sales of gas on St. Louis bet. Romain & Basin Sts. for month of March 1899	.....	20.00
"	"	Services of engineer & foreman	.....	75.00
April	1.	Labor locating & watching 6" main Canal & Basin Sts	.....	2.50
"	15.	Labor staking off 4" main both sides of Common & Basin Sts.	.....	4.00
"	17.	Labor connecting 4" main on Basin on north banquette of St. Louis for syphon on neutral ground		
15		on N. E. corner Basin & St. Louis Sts.	34.00	
		156 ft. of 4" pipe 27½c.	42.90	
		L single branch 4 x 4 108 lbs. 4c.	4.32	
		1 reducer 4 x 4 67 lbs. 4c.	2.68	
		1-4" sleeve 30 lbs. 4c.	1.20	
		150 lbs. lead 5½c.	8.25	
		10 " yarn 11c.	1.10	
		300 ft. lumber 10.00	3.00	
		40 blocks 2c.	80	
		1-1" brass plug	20	
		Cartage 3 loads 75c	2.25	
				100.70
"	29.	Labor watching 4" main south side Tulane Ave. & Basin Sts.	8.50	
"	"	Labor cutting off 3" main Basin & Tulane Ave.	2.00	
"	"	Labor cutting off 3" main Basin & Gravier Sts.	2.50	
April	29.	Labor cutting off plugging up 4" main cor. Tulane Ave. & Basin broken by contractors of drainage commission	4.45	
				17.45
		Amount forward	.....	$1707.96
1899.				
April	29.	Amount forward	.....	$1707.96
"	"	Labor laying 4" main on north banquette of St. Louis bet. Franklin & Villere Sts. also on south banquette of St. Louis bet. Marais & Villere Sts. 18 ft. on Franklin, 24 ft. on Liberty 12 ft. on Villere.	255.20	
"	"	1320 ft. 4" pipe 27½c.	363.00	
		1 double branch 6 x 4 133 lbs. 4c.	5.32	
		5 single branches 4 x 4 540 lbs. 4c.	21.60	
		1-6" sleeve 52 lbs. 4c.	2.08	
		2-4" spring bends 120 lbs. 4c.	4.80	
16		2-4" caps 24 lbs. 4c.	96	
		1-3" " 8 " 4c.	32	
		740 lbs. lead 5½c.	40.70	
		31 " yarn 11c.	3.41	
		2000 ft. lumber 10.00	20.00	
		292 blocks 2c.	5.84	
		Cartage 25 loads 75c.	18.75	
				741.89
"	"	Services of engineer & foreman	.....	125.00
"	30.	For loss on sales of gas on St Louis bet. Romain & Basin Sts. for month of April 1898	.....	20.00
May	4.	Labor connecting 4" main on Tulane Ave. crossing Basin on both sides cur by drainage commission.	23.50	
		60 ft. 4" pipe 30c.	18.00	
		1 double branch 4 x 4 133 lbs. 4c.	5.32	
		1-4" sleeve 30 lbs. 4c.	1.20	
		1-4" square bend 67 lbs. 4c.	2.68	
		2-4" caps 24 lbs. 4c.	96	
		54 lbs. lead 5½c.	2.97	
		5 " yarn 11c.	55	
		20 ft. lumber 10.00	20	
		21 blocks 2c.	42	

		2–1″ brass plugs 20c	40	
		Cartage 6 loads 50c	3.00	
		1 pipe hanger	1.15	
				60.35
		Amount forward		$2655.29
1899.				
May	4.	Amount forward		$2655.29
"	5.	Labor laying 4″ main on south banquette of St. Louis from Marais to Liberty St	29.00	
		264 ft. 4″ pipe 27½c	72.60	
		1–4″ cap 12 lbs. 4c	48	
		110 lbs. lead 5½c	6.05	
17		6 " yarn 11c	66	
		450 ft. lumber 10.00	4.50	
		60 blocks 2c	1.20	
		1–1″ brass plug	20	
		Cartage 7 loads 75	5.25	
				119.94
"	6.	Labor staking off 4″ mains Poydras & Basin Sts	4.00	
"	"	Labor watching 12″ main Gravier & Basin Sts	4.50	
"	"	Labor cutting off 2″ x 4″ mains Perdido & Basin Sts	5.00	
				13.50
"	13.	Labor staking off 4″ main cor. Lafayette & Basin Sts		2.00
"	15.	Labor relaying 3″ main on south banquette of St. Louis from Claiborne to Romain, crossing Romain	139.50	
		96 ft. 3″ pipe 26c	24.96	
		2 single branches 3 x 3 138 lbs. 4c	5.52	
		1–3″ sleeve 14 lbs. 4c	56	
		3–3″ caps 24 " 4c	96	
		26 lbs. lead 5½c	1.43	
		6 " yarn 11c	66	
		150 ft. lumber 10.00	1.50	
		275 blocks 2c	5.50	
		Cartage 10 loads 75c	7.50	
				188.09
"	19.	Labor relaying 4″ main on north banquette of St. Louis from Claiborne to & crossing Romain St	53.50	
		672 ft. of 4″ pipe 27½c	184.80	
		2 single branches 4 x 4 215 lbs. 4c	8.60	
		3–4″ caps 36 lbs. 4c	1.44	
		Amounts forward	$248.34	$2978.82
1899.				
May	19.	Amounts forward	$248.34	$2978.82
18				
"	"	344 lbs. lead 5½c	18.92	
		25 " yarn 11c	2.75	
		908 ft. lumber 10.00	9.08	
		190 blocks 2c	3.80	
		2–1¼ brass plugs 26c	52	
		2–1″ " " 20c	40	
		Cartage 11 loads 75c	8.25	
				292.06
"	20.	Labor laying 4″ main on Perdido crossing north & south banquettes of Basin St	17.00	
		48 ft. 4″ pipe 30c	14.40	
		10 lbs. lead 5½c	55	
		1 lb. yarn	11	
		Cartage 2 loads	1.00	
				33.06

May	20.	Labor cutting off 4″ main Basin & Poydras Sts	4.00		
"	"	Labor cutting off 4″ main Basin & Perdido Sts	7.50		
"	"	Labor watching at Perdido & Basin Sts	5.50		
"	"	Labor staking off main Girod & Basin Sts	2.00		
					19.00
"	"	Syphon on Common S. cor. Basin St.:			
		16 ft. ¾ iron pipe 6¼c	1.00		
		4–¾ square bends 19c	76		
		1–¾″ brass plug	12		
		2–¾″ couplings 9½c	19		
					2.07
"	"	Labor repairing service 1201 Perdido cor. Basin	2.00		
		3 ft. of ¾ lead pipe 11c	33		
		1–¾″ brass bend	46		
		1–¾″ male connection	39		
		1–¾″ female "	28		
		4 ft. cypress lumber 3½c	14		
					3.60
19		Amount forward			$3328.61
1899.					
May	20.	Amount forward			$3328.61
"	"	Labor repairing service 1333 Poydras cor. Basin	7.00		
		3 ft. of ¾″ lead pipe 11c	33		
		6 ft. of ¾ iron pipe 6¼c	38		
		1–¾″ brass cock	1.13		
		1–¾″ spring bend	18		
		1–¾″ coupling	10		
		4 ft. cypress lumber 3½c	14		
					9.26
"	24.	Labor laying 4″ main on north & south banquettes of St. Louis from Villere to Robertson St	63.50		
		540 ft. 4″ pipe 27½c	148.50		
		2–4″ sleeves 60 lbs. 4c	2.40		
		2–4″ caps 24 lbs. 4c	96		
		230 lbs. lead 5½c	12.65		
		11 " yarn 11c	1.21		
		810 ft. lumber 10.00	8.10		
		115 blocks 2c	2.30		
		3–1″ brass plugs 20c	60		
		Cartage 14 loads 75c	10.50		
					250.72
"	27.	Labor watching 4″ main Poydras & Basin	7.00		
"	"	Labor making 2 connections with 20″ gas main & 16″ drainage main in Perdido St. bet. Rampart & Basin Sts	14.50		
"	"	Labor cutting off 3″ main Basin & Poydras Sts	2.50		
		4 ft. of 2″ galv. iron pipe 27c	88		
		3–2″ nipples 21	63		
		2–2″ brass cocks 3.95	7.90		
		1–2″ union	38		
20		1–1″ brass plug	20		
					33.99
"	29.	Labor raising 20″ main on Perdido crossing Basin, & cutt'g off stand pipe from 16″ main Perdido & Basin Sts	15.00		
		1–6″ cap 20 lbs. 4c	80		
					15.80
		Amount forward			$3638.38

May	29.	Amount forward	.....	$3638.38
"	30.	Labor repairing services 1401 to 1719 & from 1719 to 1831 St. Louis & at 500 N. Franklin	66.00	
		8 ft. 1¼ lead pipe 20c	1.60	
		17 " 1" " " 18c	3.06	
		94 " ¾" " "	10.34	
		7 " 1¼" iron " 11c	77	
		15 " 1" " " 7c	1.05	
		36 " ¾" " " 6¼c	2.25	
		2-¾" brass cocks 1.62	3.24	
		5-¾" " " 1.13	5.65	
		1-1¼" " bend	79	
		3-1" " " 63c.	1.89	
		23-¾" " " 46	10.58	
		1-1" square "	25	
		4-¾" " " 18c.	72	
		1-1¼" spring "	29	
		8-¾" " " 20	1.60	
		1-1¼" mall "	09	
		1-¾" " "	04	
		1-1" male connection	51	
		11-¾" " " 39c	4.29	
		1-1" female "	39	
		6-¾" " " 28c	1.68	
		1-1¼" coupling	13	
		1-1" "	11	
		1-¾" "	09	
		2-1" elbows 6¼c	13	
		6-¾" " 4c	24	
		1-¾" brass plug	12	
21		102 ft. cypress lumber 3½c	3.57	
				121.47
"	"	For loss on sales of gas on St. Louis from Romain to Basin Sts. for month of May 1899	.....	20.00
"	"	Service of engineer & foreman	.....	125.00
		Amount forward	.....	$3904.85
1899.				
May	30.	Amount forward	.....	$3904.85
June	3.	Labor watching 4" main at Lafayette & Basin Sts.	.....	2.50
	4.	Labor connecting 4" main to 16" drainage main Per-ido & Basin Sts.	8.75	
		12 ft. 4" pipe 30c	3.60	
		2-4" spring bends 90 lbs. 4c	3.60	
		1-4" square 60 " 4c	2.40	
		1-4" cap 12 " 4c	48	
		45 lbs. lead 5½c	2.48	
		3 " yarn 11c	33	
		Cartage 2 loads	1.00	
				22.64
"	10.	Labor watching 4" main cor. Girod & Basin Sts	.....	3.00
"	12.	Labor laying 2" galv. W. I. pipe for drainage on Gravier bet. Basin & Rampart & Rampart from Gravier to Perdido	369.25	
		773 ft. of 2" galv. W. I. pipe 27	208.71	
		2-2" nipples 6¼c	12	
		2-2" unions 44c	88	
		3-2" elbows 31c	93	
		1-2" tee	38	
		2-2" brass cocks 2.70	5.40	
		22 loads breeze 25c	5.50	
		1-1¼ brass plug	26	
22		Cartage 51 loads 50	25.50	
				616.93

June	14.	Labor connecting 3″ pipe to 12″ main on Gravier & Basin Sts	4.00	
		12 ft. 3″ pipe 26c	3.12	
		1 " 3″ bend 45 lbs. 4c	1.80	
		1-3″ cap 8 lbs. 4c	32	
		5 lbs. lead 5½c	27	
		½ " yarn 11c	06	
				9.57
		Amount forward		$4559.49
June	14.	Amount forward		$4559.49
"	15.	Labor repairing 4″ main cor. Girod & Basin Sts	6.00	
		2½ lbs. lead 5½c	14	
		½ " yarn 11c	05	
		Cartage	50	
				6.69
"	17.	Labor repairing 4″ main cor. Gravier & Basin Sts	5.00	
"	"	Labor cutting off 4″ main Girod & Basin Sts	2.00	
"	"	Labor staking off 4″ main Julia & Basin Sts	2.00	
"	"	Labor repairing service 1200 Gravier St	1.50	
		Labor cutting off service 1133 Gravier St	1.50	
				12.00
"	23.	Labor laying 4″ main on Basin from Tulane Ave. to Gravier St	98.05	
		296 ft. 4″ pipe 30c	88.80	
		1-4 x 4 single bra-ch 108 lbs. 4c	4.32	
		1-4 x 4 reducer 76 lbs. 4c	3.04	
		188 lbs. lead 5½c	10.34	
		10 lbs. yarn 11c	1.10	
		375 ft. lumber 10.00	3.75	
		104 blocks 2c	2.08	
		3-1″ brass plugs 20c	60	
		1-¾ " "	12	
23		Cartage 18 loads 50c	9.00	
				221.20
"	24.	Labor connecting 4″ main with 2″ drain pipe Gravier & Basin Sts	20.00	
		61 ft. service lumber 4c	2.44	
		1-2″ iron tee	38	
		41 ft. of 1¼″ pipe 19c	7.79	
		1 " 1¼ brass bend	90	
		1-1¼″ " female connection	76	
		1-2 x 1¼ iron bushing	44	
		Cartage 1 load	50	
				33.21
				$4832.59
1899.				
June	24.	Amount forward		$4832.59
"	"	Labor repairing service Gasquet & Liberty Sts	11.00	
		50 ft. of ¾″ iron pipe 6¼c	3.13	
		3-¾″ mall bends 4c	12	
		2-¾″ long screws 25c	50	
		3-¾″ couplings 9c	27	
		1-1 x ¾ reducer	06	
		1-¾″ square bend	19	
		1-¾″ spring "	23	
		1-¾″ coupling	09	
				15.59
"	"	Labor repairing service 214 S. Basin St	3.00	
		7 ft. of ¾″ lead pipe 11c	77	
		5 " " ¾″ W. I. " 6¼c	30	

		1-¾" brass bend	46	
		1-¾" square "	19	
		1 ¾" spring "	23	
		1 ¾" female connection	28	
		8 ft. cypress lumber 3½c	28	
				5.51
"	"	Labor repairing service 220 S. Basin St	3.00	
24		4 ft. of ¾ lead pipe 11c	44	
		2 " " ¾" W. I. " 6½	12	
		1-¾" brass bend	46	
		1-¾" square "	19	
		1-¾" spring "	23	
		1-¾" female connection	28	
		1-¾" coupling	09	
		5 ft. cypress lumber 3½c	18	
				4.99
"	30.	Service of engineer & foreman up to June 30th 1899 on all foregoing work except St. Louis St. & Canal cor. Claiborne St. jobs		400.00
		Amount forward		$5258.68
1899.				
June	30.	Amount forward		$5258.68
July	1.	Labor cutting off & taking down 4 lamp posts on Julia from Carondelet to Magazine St	4.00	
		4-¾" brass plugs 12c	48	
				4.48
"	"	Labor cutting of 5" main Rampart St. cor. of Julia 4" main Rampart E. cor. of Julia 4" main W. cor. of Julia	8.50	
"	"	Labor staking off & watching 4" main cor. Baronne & Julia		4.50
"	"	Labor staking off 12" main Baronne & Julia		2.50
"	8.	Labor putting in service at 1133 Gravier		6.00
"	"	Labor putting in syphon Rampart S. cor. of Julia	5.00	
		15 ft. of ¾" W. I. pipe 9	1.35	
		4-¾" square bends 19	76	
		1-¾" elbow	05	
				7.16
"	"	Labor watching 4" & 12" main Julia & Baronne		9.00
25				
"	"	Labor staking off 4" & 6" mains Julia & Baronne Sts.		2.50
"	15.	Labor staking off mains on Julia both sides of St. Charles		5.00
"	"	Labor watching 4" & 16" mains Julia & Carondelet Sts		9.50
"	22.	Labor staking off 6" & 4" mains cor. Camp & Julia Sts		4.00
"	"	Labor watching 4" main St. Charles & Julia Sts		7.50
"	"	Labor putting in syphon cor. St. Charles & Julia	5.00	
		6 ft. of ¾" W. I. pipe 9c	54	
		4 ft. ¾" square bends 19c	76	
		1-1" brass plug	20	
		1-¾" " "	11	
		1-¾" coupling	05	
				6.66
		Amount forward		$5335.98
1899.				
July	22.	Amount forward		$5335.98
"	29.	Labor staking off 6" main on Magazine & Julia & watching same for pile driver		7.50
July	29.	Labor watching 6" & 4" main Camp & Julia Sts		6.00
"	"	Labor connecting 5 main on St. Charles & Julia broken by digger	7.50	

		8 ft. 6″ pipe 45c	3.60	
		1 " 6″ sleeve 52 lbs. 4c	2.08	
		45 lbs. lead 5½c	2.47	
		3 " yarn 11c	33	
		5 blocks 2c	10	
		2 1″ brass plugs 20c	40	
		Cartage 2 loads	1.00	
				17.48
26				
Aug.	5.	Labor extending & drilling mains cor. Poydras & Basin to let out water	11.55	
"	"	Labor staking off main Julia & Constance Sts	3.00	
"	"	Labor watching 4″ main Julia & Magazine	7.50	
				22.05
"	12.	Labor staking off main cor. St. Joseph & Constance	4.00	
"	"	Labor watching pile driver	2.00	
				6.00
				5395.01
"	12.	Labor staking 5″ main cor. Delord & Constance	4.50	
"	"	Labor watching 4″ main cor. St. Joseph & Constance Sts	5.00	
				9.50
"	26.	Labor watching pile driver & digger cor. Delord & Constance Sts		10.00
		Amount forward		$5414.51
1899.				
Aug.	26.	Amount forward		$5414.51
1899.				
Aug.	26.	Amount forward		$5414.51
"	31.	Labor laying 4″ main on Basin 483 ft. bet. Gravier & Perdido & 444 ft. bet. Perdido & Poydras Sts. on east banquette of *of* Rampart	186.90	
		927 ft. 4″ pipe 31c	287.37	
		3-4 x 4 single branches 327 lbs. 4c	13.08	
		1-4″ sleeve 31 lbs. 4c	1.24	
		2-4″ spring bends 128 lbs. 4c	5.12	
		525 lbs. lead 5½c	28.88	
		17 " yarn 11c	1.87	
		1375 ft. lumber 10.00	13.75	
		225 blocks 2c	4.50	
27		6-1″ brass plugs 20c	1.20	
		Cartage 24 loads 50c	12.00	
				555.91
"	"	Services of engineer & foreman		90.00
Sept.	2.	Labor staking off 4″ & 2″ mains Camp & Girod Sts.		4.50
"	9.	Labor cutting off 4″ main cor. Camp & Gravier and cor. Camp & Common, and staking off 4″ & 12″ mains Camp and Common	20.25	
"	"	Labor staking off 4″ & 12″ mains Camp and Gravier Sts	4.00	
		Labor staking off 6″ main cor. Camp & Poydras Sts.	4.00	
		Labor watching pile driver & digger at Camp & Girod Camp & Poydras & Camp & Gravier	12.00	
				40.25
"	16.	Labor staking off 6″ main Camp & Canal Sts	4.00	
		Labor watching pile driver & digger cor. Camp & Gravier & cor. Camp & Common Sts	4.50	
				8.50
"	23.	Labor watching digger Camp cor. Common & Camp cor. Canal		6.00
		Amount forward		$6119.67

1899.				
Sept.	23.	Amount forward		$6119.67
"	29.	Labor taking up and re-laying 4″ main on E. side of Camp from Gravier towards Common up to #206 Camp St.	71.40	
		1–4″ sleeve 31 lbs. 4c	1.24	
		1–4″ cap 12 " 4c	48	
		100 lbs. lead 5½c	5.50	
		4 lbs. yarn 11c	44	
		261 ft. lumber 10.00	2.61	
		50 blocks 2c	1.00	
		1–1¼″ brass plug 26 1–1″ brass plug 20c.	46	
		Cartage 5 loads 50c	2.50	
				85.63
Oct.	14.	Labor watching digger Claiborne bet. Canal & Gasquet		7.50
Oct. 28	18.	Labor relaying 6″ 4″ & 3″ mains on S. banquette of Julia from Baronne to Rampart crossing Julia at Rampart in place of pipe broken by pile driver	189.75	
		12 ft. 6″ pipe 45c	5.40	
		66 " 4″ pipe 31c	20.46	
		12 " 3″ pipe 29c	3.48	
		1–6″ sleeve 52 lbs. 1–4″ " 31 lbs. 1–3″ " 14 lbs. } 97 lbs. 4c	3.88	
		133 lbs. lead 5½c	7.20	
		12 lbs. yarn 11c	1.32	
		100 ft. lumber 10.90	1.00	
		158 blocks 2c	3.16	
		1–1¼″ brass plug 26c. 5–1″ brass plug @ 20	1.00	
		5 loads breeze 25c	1.26	
		Cartage 12 loads 50c	1.25	
			6.00	
				244.16
"	"	Services of engineer & foreman		90.00
		Credit		$6546.96
1899. July	31.	By cash on account		2481.38
				$4065.58
				325.00
				$3740.58

(Endorsed on face in red ink:) Approved after deducting $325.00 for three thousand seven hundred and forty 58/100 (Signed) B. M. Harrod ch'f suy.

Exception of No Cause of Action.

Filed November 10th, 1899.

29 Civil District Court, Division —.

NEW ORLEANS GAS LIGHT CO.
vs.
DRAINAGE COMMISSION OF NEW ORLEANS. } No. 60609.

And now comes the defendant, The Drainage Commission of New Orleans, and for premptory exception to the plaintiff's petition, says that it discloses no cause or right of action against this defendant.

Wherefore, the premises considered, defendant prays that this exception be maintained and that the plaintiff's suit be dismissed at its cost.

(Signed) HOWE, SPENCER & COCKE,
Att'ys — Def't.

Continued.

Extract from Minutes of Division "E."

FRIDAY, *January 26th*, 1900.

Present: The Honorable Geo. H. Theard, judge.

The exceptions in the following case were ordered continued to Friday, February 9th, 1900.

N. O. GAS LIGHT CO.
vs.
DRAINAGE COMMISSION OF N. O. } 60609.

Continued.

Extract from Minutes of Division "E."

FRIDAY, *February 9th*, 1900.

Present: The Hon. Geo. H. Theard, judge.

The following exception was ordered continued to Friday, February 16th, 1900, at 11 a. m.

N. O. GAS LIGHT CO.
vs.
DRAINAGE COMMISSION OF N. O. } 60609.

Continued.

Extract from Minutes of "Division "E."

FRIDAY, *February 16th*, 1900.

Present: The Hon. Geo. H. Theard, judge.

30 The following exception was ordered continued to Friday, February 23rd, 1900.

N. O. GAS LIGHT CO.
vs.
DRAINAGE COMMISSION OF N. O. } 60609.

Continued.

Extract from Minutes of Division "E."

FRIDAY, *February 23rd*, 1900.

Present: The Hon. Geo. Theard, judge.

The following exception was ordered continued to Friday, March 2nd, 1900, at 11 a. m.

N. O. GAS LIGHT CO.
vs.
DRAINAGE COMMISSION OF N. O. } 60609.

Submitted.

Extract from Minutes of Division "E."

FRIDAY, *March 2nd*, 1900.

Present: The Hon. Geo. H. Theard, judge.

The exception herein filed by defendant on February 5th, 1900, came on this day for trial.

Present: Chas. F. Buck, Esq., for plaintiff; W. B. Spencer, Esq., for defendant & exceptor.

And the said exception having been argued and submitted the court took the same under advisement.

Exception Overruled.

Extract from Minutes of Division "E."

MONDAY, *March 26th*, 1900.

Present: The Hon. Geo. H. Theard, judge.

For the reasons this day orally assigned by the court, the court considering that the exception herein is not well founded:

It is ordered that the exception herein filed by defendant on November 10th, 1900, be overruled.

Answer of Defendant.

Filed May 3rd, 1900.

31 Civil District Court, Div. E.

NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS } No. 60609

Now into court, through undersigned counsel, comes the defendant and reserving unto itself the benefit of the exception heretofore filed and overruled and in no wise waiving same for answer to the plaintiff's petition, says:

1. It denies all and singular the facts and allegations therein contained save only such as may hereinafter be expressly admitted.

2. It admits that it was created by and organized under the provisions of act 114 of 1896 and acts amendatory of and supplemental to said act for the purpose of providing for the drainage of the city of New Orleans.

3. It, admits that it claims under the provisions of said laws to have authority to establsh and construct drainage canals in any and all streets and public places of the city of New Orleans where same may be deemed necessary to accomplish the purpose for which it was created, and to give such canals such locations and dimensions — may be necessary to properly drain the city.

4. It admits that in the establishment and construction of drainage canals, it came in contact with the mains and conduits owned and constructed in public streets by the plaintiff company, and that, as hereafter set forth, it required the plaintiff to so remove or change the location and position of its said conduits as not to obstruct or impair the efficiency of said drainage canals.

5. It avers that by said acts of the legislature aforesaid, it was charged with full power to control and execute the drainage of the city of New Orleans, and was authorized to execute and carry out substantially the plan for such drainage adopted by the council of the city of New Orleans by ordinance No. 10091, council
32 series, approved July 10th, 1895, so far as it might find said plan desirable and practicable, with the right however, to change or modify the same as in its judgment circumstances might require.

That it was further vested with the right of eminent domain and the right, in all streets and over all lands of the State and city in the parishes, Orleans, Jefferson, and St. Bernard, was granted for any of its works, and generally with reference to the accomplishment of the construction of said drainage system was vested with the police power of the State.

6. It avers that under the powers so conferred, it has proceeded to the establishment and construction of said drainage system as so adopted in the city council as aforesaid, save only where same has been modified for its improvement in the judgment of said commission. And in the prosecution thereof has preceeded to lay and construct drainage canals of proper and reasonable dimensions in and through various streets of this city.

7. It admits that the plaintiff company, claiming authority under certain acts of the legislature, set forth in its petition has laid under the surface of various streets certain mains and conduits, and that for the proper construction, maintenance, and efficient use of said drainage canals, it was necessary and proper that the location of said mains and conduits should be and were required to be changed.

8. This defendant denies, however, that it acted unreasonably or oppressively or in any wise illegally in so requiring the moving of said mains and conduits, and denies that it is liable to said plaintiff in any sum whatever on that account, but, on the contrary, it avers that it acted in a reasonable and prudent manner and solely with a view to securing and efficient and proper drainage system as required by law, and that it had the right to require in the construction of this public work the plaintiff to so conform its mains and con-
33 duits as not to obstruct or impair the efficiency of said system.

Wherefore, the premises considered, defendant prays that the plaintiff's suit be rejected at its costs, and for general relief.

(Signed) HOWE, SPENCER & COCKE,
Att'ys of Def't.

Continued.

Extract from Minutes of Division "E."

WEDNESDAY, *November 28th*, 1900.

Present: The Hon. Geo. H. Theard, judge.
The following case was ordered continued by preference.

Continued.

Extract from Minutes of Division "E."

WEDNESDAY, *December 12th*, 1900.

Present: The Hon. Geo. H. Theard, judge.
The following case was ordered continued by preference.

Continued.

Extract from Minutes of Division "E."

WEDNESDAY, *January 2nd*, 1900.

Present: The Hon. Geo. H. Theard, judge.
The following case was ordered continued by preference.

34 Civil District Court, Parish of Orleans, Division "E."

NEW ORLEANS GAS LIGHT COMPANY
vs.
DRAINAGE COMMISSION OF NEW ORLEANS. } No. 60609.

Testimony and notes of evidence taken in open court on this 16th day of January, 1901, in the above entitled cause, on behalf of plaintiff, before the Hon. George H. Theard, judge presiding.

Appearances.

Mr. Charles F. Buck, attorney for plaintiff.
Mr. W. B. Spencer, attorney for defendant.

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Reported by D. O'Day, stenographer.

By Mr. BUCK: I offer in evidence act 114 of the Acts of 1896, and act 63 of the Acts of 1898, amendatory thereof, creating and defining the rights and duties of the Drainage Commission of New Orleans.

I also offer in evidence the charter of the New Orleans Gas Light Company, particularly act 97 of the Acts of 1875 (70) passed April 1st 1875 (70), and act 106 of the Acts of 1873—the original act of incorporation, being act of 1835, at page 92 of the Acts, together
35 with the act 157 of the Acts of 1874, being an act authorizing the consolidation of business corporations &c, and the articles of consolidation of the original New Orleans Gas Light Company with the Crescent City Gas Light Company which was incorporated by the acts heretofore referred to, namely, act 97 of 1875, and act 106 of 1873. The act of consolidation in which the Crescent City Gas Light Company, was consolidated with the original New Orleans Gas Light Company, chartered under the act of 1835 and organized—the existing New Orleans Gas Light Company: all contained in pamphlet marked Exhibit "P-A," which by consent is received in evidence without any further certification.

I offer in evidence the decision of the Supreme Court of the United States in the case of The New Orleans Gas Light Company, appellant *vs.* The Louisiana Light and Heat Producing & Manufacturing Company, decided in 1885, and found in volume 115 of the Reports of the Supreme Court of the United States page 650; a copy of the decision is contained in the printed pamphlet marked Exhibit "P-B," and is received in evidence to be used in this record.

Admission. (Dictated by Mr. Spencer.)

It is admitted by counsel for defendant, that as alleged in the plaintiff's petition, in order to avoid the stoppage, or interference with the progress of the draining work, by writ of injunction, as was threatened by the plaintiff in this case, it was agreed between the parties to this suit that the New Orleans Gas Light Company should, without prejudice, remove or change the location of the various mains, conduits, etc., as required by the drainage commission, keeping an account of the cost thereof, and that the liability of the drainage commission should thereafter be determined for such cost of removal and change of location, the rights of neither party to be in any wise prejudiced by this agreement.

It is further admitted that this agreement was formally
36 recognized by the board of commissioners of the drainage commission, officially, in a resolution passed by that body, a copy of which will be put in the record.

Mr. DUNCAN JONES, being duly sworn on behalf of plaintiff, deposes and says.

Direct examination by Mr. BUCK:

Q. Mr. Jones, you are the secretary of the New Orleans Gas Light Company?

A. Yes, sir.

Q. Are you familiar with its charter, franchises, and its works?

A. Yes, sir.

Q. The charter provides a capital stock of three million seven hundred and fifty thousand dollars; do you know whether that entire stock is subscribed and issued?

A. Yes, sir.

Q. What is the market value of the stock?

A. Well, it is to-day about one hundred and four (104) bid, and one hundred and nine (109) asked.

Q. In other words the value of the capital of the company represented by this, represents three million and a half dollars?

A. Three million and three quarters.

Q. Has the New Orleans Gas Light Company any other way of delivering its gas to its customers under its charter, except through the mains laid throughout the city?

A. No, sir.

Q. Do you know about how many miles of mains are laid throughout the different portions of the city?

A. About two hundred and twelve miles.

Q. I show you a document marked "P-3," purporting to be a copy of a resolution passed by the board of drainage commissioners; the company had possession of that?

A. Yes, sir.

37 By Mr. BUCK: I offer this document in evidence marked Exhibit "P-3."

Q. This copy was sent to the New Orleans Gas Light Company?
A. Yes, sir.

Q. Haven't you a further resolution passed by the board of directors, embodying a certain agreement reached between the company and the board of commissioners of the drainage commission?
A. There has been a resolution passed by the drainage commission to the effect that they would set aside fifty thousand dollars to defray the expenses of the changes made by the company in their pipes, in consequence of the drainage work.

By Mr. BUCK: I offer in evidence copy of resolution of the drainage commission embodying the agreement set forth in the petition and admitted in the answer, marked Exhibit "P-4."

By Mr. BUCK:

Q. Mr. Jones, do you know how this controversy commenced originally; before these resolutions were passed, what, if anything, passed between the officers of the gas light company, and the officers of the drainage board, say its engineer, Mr. Harrod?
A. Well when the work was first started on St. Louis street between Roman & North Basin—at least beyond that point, beyond Roman; when they got to Roman they began to interfere with our mains and service, and some correspondence passed in regard to the injury done to the company's property, and that the company expected to be reimbursed for it, and Major Harrod and the president of our company had a few interviews in regard to it, and they arrived at an understanding that the drainage commission would pay for it. We were to keep an account of all material and time of the men, and everything pertaining to the work, and repairs and relaying of the mains, and render a bill and the bill would be paid. That we did.

Q. As a matter of fact the charges originally made by the company, and the labor and cost thereof was paid by the board
38 of drainage commissioners?
A. Yes, sir; for a portion of that work. After that payment was made then the question arose as to future payments, and while I am not positive that was the time the resolution was passed, setting aside fifty thousand dollars, that resolution was the outcome of this payment of the bill rendered by the company.

Q. Well, it was the outcome of the disposition not to obstruct the work, and that the matter would, otherwise, be protected in its legal aspect?
A. Yes, sir.

Q. Have you the figures before you, as to how much the company has expended up to this time, and how much it has been paid?
A. No, sir, not up to this time, because the bill that we rendered them, up to about the middle of last October, amounted to $6546.96, and this payment of $2481.38, for work done on St. Louis street, was

credited, and left a balance due up to that period of $4065.58. Since then work has been prosecuted on Third street, along St. Charles avenue, and, possibly one or two other places, that I don't call to mind, for which no bill has been rendered. We still keep an itemized account, and will render a bill as soon as we can make it up.

Q. I show you an account annexed to the petition, marked Exhibit "A:" Please look at the items on the account, and the résumé of it, and say whether or not it is the substance of what you have just stated?

(Document handed to witness for identification)

A. This is the bill which I have just spoken of—of October 18th.

Q. Of the work, you have no personal knowledge?

A. No, sir: I have no personal knowledge, anymore than that these materials were used.

Q. In making out the bills—these accounts—what rule does the company observe; are they reasonable and just?

A. Yes, sir.

39 Q. The actual expenses?

A. Yes, sir.

Q. Is this work done by your own employés, or is it done by others?

A. It is done by our own employés.

Q. Was anything said originally, during all these negotiations why it was preferable that the employés of the gas light company should do the work, to your knowledge?

A. It was absolutely necessary to have experienced men to do that kind of work.

Q. Does the laying of gas mains require any skill.

A. Yes, sir; it does require skill, experience and knowledge.

Q. Why?

A. Because it requires the mains to be laid with a view to their proper levels so as to drain certain points where syphons or drips are located, and from which the water which is contained in the pipes is pumped. This is absolutely necessary or otherwise the consumers would be deprived of light.

Q. There is a certain amount of condensation going on in the gas?

A. Yes, sir; certain leakage taking place in the pipes.

Q. The pipes have to be laid at a certain distance so that this water can be pumped out?

A. Yes, sir; they have to be laid at a certain distance.

Q. The board of drainage commissioners agreed that the company should do the work itself?

A. Yes, sir, as far as my knowledge goes.

Q. Can you state, approximately, how much money has been expended since that account was rendered?

A. Well, probably twenty five hundred dollars. I am speaking only from memory. I don't think it is less than that.

Q. Are you familiar with the scope of the drainage law, and its effect upon the entire work of the company, judging from your experience of the past, towards the completion of the work—what might be the possible total expense?

By Mr. SPENCER: I object to that question as irrelevant and immaterial.

By the COURT: The court rules that the objection goes to
40 the effect to be given to the evidence, and not to its admissibility.

By Mr. SPENCER: To which ruling of the court, counsel for defendant excepts, and makes this note in lieu of a formal bill of exceptions.

By Mr. BUCK:

Q. On the same ratio that the work has progressed, what would you estimate the probable injury to the company?

A. Well, I haven't exactly in my mind the extent of the drainage work, or just how far it has progressed in its completion, but it strikes me from my past experience, and the expense that we have been put to, I should think that it might amount to three times as much. Of course a great deal depends upon the locality where the canals are dug. If we have large mains in the center of a street, and we have to take them out and have to then relay the mains on each side of the street—in other words under each banquette, that of course necessitates the taking up of one main which has answered the purpose, and then relaying two mains.

Q. Has that been done in some of these instances?

A. Yes, sir. It has been done on St. Louis street, and it has to be done where they excavate from curb to curb, the main in the center of the street has to be taken up and we have to relay the mains under the banquette on both sides of the street; otherwise, we can't serve the consumer.

Q. You have no means of knowing to what extent that may become necessary?

A. No, sir.

Cross examination by Mr. SPENCER:

Q. Mr. Jones, I gather from your testimony that the first interference was when they started to dig the St. Louis Street canal?

A. Yes, sir; as far as my recollection goes.

Q. And that at first Major Harrod agreed with Mr. Sieward,
41 the president of the gas light company, that the drainage commission would pay for the actual cost of removal?

A. Yes, sir.

Q. They did pay you for that, did they not?

A. Yes, sir.

Q. Then, did you receive any notice that they would not thereafter pay anything for the expense of the removal or change of these conduits

A. I think Major Harrod wrote a letter to Mr. Sieward, something to that effect, but I don't recollect exactly what it was. Understand me, Mr. Spencer, I am not familiar with that, because I don't recollect having seen the letter; but speaking from memory, I think I recollect that Major Harrod and Mr. Sieward had a conversation and that was mentioned—at least this letter was written.

By Mr. BUCK: Understanding the object of this examination, it is admitted that after certain accounts, as stated by the witness, had been paid, Major Harrod, the engineer of the drainage commission sent a letter to the president of the gas light company, notifying him that the board was of opinion that under the law they were not responsible for these payments, and that thereafter no payments would be made for the work, and that the work would be demanded to be done, and the pipes removed, but without compensation, the point then being for the first time made that the gas company had no right to receive any compensation for this interference.

It is agreed that the letter shall be put in the record if found.

By Mr. SPENCER:

Q. The right to change the pipes was claimed by your company was it not?

A. Yes, sir.

Q. You thought it would be inadvisable to allow any one, but your experienced workmen to change them?

A. Yes, sir.

42 Q. Did you, from time to time, render the drainage commission accounts showing the amount you had expended?

A. I don't know whether there were any other bills presented. I think there were and they were returned. That I can not say from memory. This is the only account on which any payment has been made at all, that was rendered the drainage commission. I don't recollect that part of it.

By Mr. BUCK:

Q. Under whose supervision is the work done; what officer represents your company in supervising the work?

A. Albert Richter, and his assistant, J. J. Compston.

Q. Does he keep an account of the men working?

A. Yes, sir. Compston keeps an account of the time and material. Mr. O'Neils make up the account and returns it to the main office.

By Mr. SPENCER:

Q. I understand that you had nothing to do with the preparations of that account yourself?

A. No, sir.

Q. You know nothing about it?

A. No, sir; except that I saw it was entered in the books, but I did not go over the calculations.

Admission. (dictated by Mr. Buck).—It is admitted that if the engineer of the New Orleans Gas Light Company, Mr. Richter, who was expected to be called as a witness, were put upon the stand, he would corroborate the testimony of Mr. Jones, as to the special care and skill required in the laying of the gas mains to preserve the proper flow of gas and prevent the accumulation of water in the pipes, and for that reason it was agreed that the officers and employés of the gas light company should do the work themselves, keeping an account of the material and cost of labor.

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Agreement.—It is agreed between the parties that the case shall stand submitted here, with the question as to the account left open to this extent: Defendant desires time to examine it, and if it is not approved, testimony will be taken out of court to prove the account, which will complete the evidence. Otherwise, if nothing further is done, the account stands admitted to be correct as now in the record, and plaintiff here rests.

(Endorsed:) No. 60,609. Civil district court. Division "E." Offered in evidence by —— ——, plaintiff. Filed Jan. 30, 1901. A. H. Flemming, D'y clerk. No. 60,609. Civil district court, parish of Orleans, division "E." New Orleans Gas Light Co. *vs.* Drainage Commission of New Orleans. Evidence on the part of plaintiff taken Jan'y 16th, 1901, Filed —— 1901. —— —— d'y clerk. Reported by D. O'Day, stenographer.

44 Civil District Court, Parish of Orleans, Division "E."

NEW ORLEANS GAS LIGHT COMPANY
vs.
DRAINAGE COMMISSION OF NEW ORLEANS. } No. 60609.

Testimony and notes of evidence taken in open court on this 16th day of January, 1901, in the above entitled cause, on behalf of defendant, before the Hon. George H. Theard, judge presiding.

Appearances.

Mr. Charles F. Buck, attorney for plaintiff.
Mr. W. B. Spencer, attorney for defendant.

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Stamp Civil district court division "E" Reported by D. O'Day stenographer Offered in evidence by defendant Filed Jan. 29 1901 A. H. Flemming d'y clerk.

By Mr. SPENCER: Counsel for the defendant offers in evidence ordinance No. 7170, council series, adopted January 31st, 1890.

Also ordinance No. 7350, council series, adopted March 28th, 1893.

45 Also ordinance No. 8327, council series, adopted November 21st, 1893.

Also report of the drainage of the city of New Orleans, of date April 29th, 1895, marked Exhibit "D–1," which it is agreed may go up in the original in case of appeal.

Also ordinance No. 10991, council series, of the city council, adopting the report and plan of drainage, set forth in the document marked Exhibit "D–1."

Also ordinance No. 11489, council series, authorizing the city engineer to secure the services of an advisory board of engineers in the preparation of the specifications of the drainage work.

Also the specifications for the construction of a system of drainage in the city of New Orleans, prepared by the city engineer, marked Exhibit "D–2," it being agreed that this document in case of appeal, may also go up in the original.

Also an extract from the proceedings of the city council of date January 24th, 1896, adopting and approving, with amendments, the specifications hereinabove referred to, as Exhibit "D–2."

Major B. M. HARROD, being duly sworn on behalf of defendant, deposes and says.

Direct examination by Mr. SPENCER:

Q. Major Harrod, you are chief engineer of the drainage commission?

A. Yes, sir.

Q. You have been such since its organization?

A. Yes, sir.

Q. Were you a member of the advisory board of engineers that proposed to the city council certain plans and specifications in the construction of the drainage system of the city of New Orleans?

A. Yes, sir.

Q. Who were the other members of the engineering committee?

46 A. Mr. Rudolph Herring and Mr. H. P. Richardson.

Q. Do you know the members of that advisory board, their names?

A. The mayor, Mr. Fitzpatrick was a member, and Mr. Walmsley was a member.

Q. What Walmsley?

A. R. M. Walmsley. Colonel Denis was a member.

Q. J. C. Denis?

A. Yes, sir. I think for a part of the time Mr. Albert Baldwin was a member.

Q. Mr. Baldwin succeeded Mr. Edward Fenner?

A. He succeeded Mr. Edward Fenner, yes, sir.

Q. Major Harrod, I ask you whether or not you have been in active supervision and control of all that work done by the drainage commission in this city?

A. Yes, sir.

Q. I would ask you to state whether or not the drainage system being now constructed in the city, has been in accordance with the plans and specifications as adopted by the city council, by this ordinance No. 10991?

A. Yes, sir.

Q. I would ask you to state whether or not any changes have been made in that plan, and if so, in what tendency have those changes been made?

A. The entire object has been to follow out as closely as possible the original plan. Changes have been very few, and very small; changes of detail. Any changes that have been made, have been made with a view to reduction of dimensions and costs

Q. I would ask you to state whether or not the plan as adopted and as being carried in execution is necessary for the drainage of the city of New Orleans?

A. I think it is the proper plan, yes, sir, for the drainage of the city.

Q. Do I understand you to state, in the respects that the plans and

specifications have been departed from, they were in the reduction of dimensions?

47 A. Yes, sir. There had been no increase of size at all.

Q. I would ask you to state whether or not the plans and specifications, as adopted, fix the location of the various canals which the drainage commission has been constructing?

A. Yes, sir; that is shown in map 4, attached to that report.

Cross-examination by Mr. BUCK:

Q. I suppose you deemed in your knowledge as engineer, that whatever you called upon the gas light company to do in changing its mains, was necessary to carry out your ideas?

A. I think it was.

Q. Have you familiarized yourself with the location of gas mains by inquiring at the office of the company?

A. Yes, sir. I have called upon them for such information as they could furnish me, and I have seen that information myself in the office.

Q. From your knowledge, both on the one hand of the scope of the work of the drainage commission yet to be done, and your knowledge of the plans and extent of mains of the New Orleans Gas Light Company, can you form an estimate of the extent it may be necessary to remove the work on the gas mains in the completion of the plant?

A. I cannot beyond this much; the greater part of the work has been done, because the drainage in the most densely settled part of the city has been practically completed. The area that will be covered by the unfinished drainage will be quite as great as that which has already been done, but it will be in the neighborhood where the gas pipes are very probably much fewer and probably very much smaller; so I would say, excepting the point of area, the work is at least half done.

Q. But do you apprehend that further interference will become necessary?

A. We will meet with other gas pipes, I expect, in the drainage of the system.

Q. You had the inspection of this work agreed to, paying
48 the gas company for the expense necessary or incurred in doing the work, and furnishing new material?

A. Yes, sir, a certain part of it.

Q. And under that agreement certain parts of the work has been actually paid for?

A. Yes, sir.

Q. How came you to change that method of going ahead as now?

A. In both cases I acted under advice, sir.

By Mr. SPENCER:

Q. Advice of counsel, you mean?

A. Advice of counsel, yes, sir.

By Mr. BUCK:

Q. Counsel advised you at first to recommend payment?
A. They did, sir.
Q. After that they changed their opinion and advised you that the board was not liable, and you so notified the New Orleans Gas Light Company?
A. I did, sir.
Q. Your communications were amicable?
A. Entirely so.
Q. Do you know under the agreement, that was finally arrived at, that the work should continue without interference, reserving all the rights of the gas company?
A. That was the understanding, that they were to reserve their rights, and then they asked to file the accounts in my office, which I agreed to, with the distinct understanding that it did not affect the rights of either party, and after that agreement I have not considered that it was my business to examine those accounts which I have not done yet.
Q. Were you present at the meeting of the board of drainage commissioners, at which these resolutions were passed, embodying the substance of the agreement?
A. I have no doubt of it. I don't think I have ever missed more than one or two meetings. I am quite sure I was there.

By Mr. SPENCER:

49 Q. Major, wherever this interference took place, could it have been reasonably avoided with due regard to the carrying out of an efficient drainage system?
A. I think the interference was minimized as much as possible. It was my object to do so.

By Mr. SPENCER: The case is submitted, except as to such testimony as may be taken out of court, in reference to the accounts sued on.

(Endorsed:) No. 60,609. Civil district court, parish of Orleans, division, "E." New Orleans Gas Light Company *vs.* Drainage Commission of New Orleans. Evidence on behalf of defendant, taken Jan'y 16th, 1901. Filed, —— 1901. —— ——, d'y clerk. Reported by D. O'Day, stenographer.

50 *Charter of New Orleans Gas Light Company, Offered in Evidence by Plaintiff.*

Filed January 30, 1901.

50½ Charter and by-laws of the N. O. Gas Light Company as reorganized by consolidation with the Crescent City Gas Light Company, April 1, 1875.

50-1 Charter and by-laws of the N. O. Gas Light Company as reorganized by consolidation with the Crescent City Gas Light Company, April 1, 1875.

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50–3 *Charter of the New Orleans Gas Light Company as Reorganized by Consolidation with the Crescent City Gas Light Company, April 1st, 1875.*

No. 97.

An act to incorporate the Crescent City Gas Light Company.

Incorporators.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened:* That Joseph H. Oglesby, William Creevy, Francis J. Herron, F. W. Perkins, S. D. McPherson, George F. Sherman, W. B. Cornell, W. Hawksworth, and their present and future associates, successors and assigns, be and they are hereby constituted and declared to be, from and after the passage of this act, a body corporate and politic, in fact and in name, by the style and title

Title.

of "The Crescent City Gas Light Company," and by that name they and their successors shall and may have continual succession, and shall be persons in law, capable of sueing and being sued; pleading and being impleaded; answering and being answered unto; defending and being defended in all courts and places whatsoever; and that they and their successors may have a common

Seal.

seal, and may change and alter the same at pleasure; and also, that they and their successors by

Power to hold real estate.

the same name and style shall be in law, capable of holding, purchasing and conveying any estate, real or personal, for the use of said corporation. *Provided*, That the lands, tenements and hereditaments which it shall be lawful for said

50–4 corporation to hold, shall be only such as shall be requisite for its immediate accommodation in relation to the convenient transaction of its business, and the properly carrying on and conducting of its works; or such as shall have been mortgaged to it, in satisfaction of debts contracted in the course of its dealings, or purchased at sales, upon judgments which shall have been obtained for such debts.

Capital stock $3,000,000.

SECTION 2. *Be it further enacted, etc.*, * That the capital stock of said corporation shall be three million dollars, to be divided into thirty thousand shares of one hundred dollars each.

* See agreement of consolidation, article 2, page 14.

SECTION 3. *Be it further enacted, etc.*, That books for subscription to the capital stock of said company shall be opened in New Orleans, and under the management and superintendence of the incorporators, who shall fix the time and places for receiving such subscriptions, giving due notice of the same through the daily papers; and that after seven thousand five hundred shares are subscribed, the incorporators shall call a meeting of the subscribers, for the purpose of electing a board of directors, whose term of office shall be until the first Tuesday of January following their election as such: *Provided*, * That no one shall be elected as director who is not a resident of the State of Louisiana, and the owner of one hundred shares of the stock: *Provided, further*, That the incorporators shall have the power to fix the per centum to be paid upon subscribing to the stock, and the time at which further instalments shall be called in, until the election of the first board of directors, when this power shall rest with them and their successors in office.

Subscriptions to stock.

Directors.

Qualifications.

Instalments.

SECTION 4. *Be it further enacted, etc.*, † That the office of said company shall be located in New Orleans; that the works and affairs of said company shall be managed and conducted by a board of six directors, who shall elect one of their own number president, and shall also elect a secretary; and that from and after the first election of directors, an annual election for directors shall be held on the first Tuesday of each year, due notice of the same to be given by the secretary of the company through the daily papers, for thirty days previous to the time fixed for said election; the election to be held at the office of the company, each share of stock to be entitled to one vote, either by the owner in person or by proxy, and the person receiving the highest number of votes to be declared duly elected; the board of directors to fix the compensation of the president and other officers and employees of the company.

50–5

President and secretary.

Annual election for directors.

How held.

Salaries.

SECTION 5. *Be it further enacted, etc.*, That if any director shall remove out of the State, or cease to be a stockholder, his office shall be declared vacant; and whenever any vacancy or vacancies

Vacancies How filled.

* This restriction was removed by act No. 106, (July, 1873.) See page 7, sec. 1.
† This section was amended by act No. 106, (July, 1873.) See page 7, sec. 1.

shall happen among the directors by death, resignation, or otherwise, such vacancy or vacancies shall be filled for the remainder of the year in which they shall happen by such person or persons as the remainder of the directors for the time being, or a majority of them shall appoint.

Directors shall have power

SECTION 6. *Be it further enacted, etc.*, * That a majority of the board of directors shall constitute a board for the transaction of business, and shall have power to make and prescribe such by-laws, rules and regulations as shall appear needful and proper, and shall have the power of appointing as many officers, clerks and assistants as may be necessary for carrying on the business and affairs of the company, allowing them such salary as they may see proper.

To make by-laws,

Appointments

And fix salaries.

Half yearly dividends.

SECTION 7. *Be it further enacted, etc.*, † That half-yearly dividends shall be made of so much of the profits of said company as the directors may think advisable, and that at each annual meeting for the election of directors, the outgoing directors shall lay before the stockholders a statement of all the affairs and concerns of the company for their information.

Statement of affairs

50–6 SECTION 8. *Be it further enacted, etc.*, ‡ That the Crescent City Gas Light Company, their successors and assigns, shall have and be entitled to the sole and exclusive privilege of making and vending gas lights in the city of New Orleans, to such persons or bodies corporate who may voluntarily choose to contract for the same, for the term of fifty years, from and after the date of the expiration of the charter of the New Orleans Gas Light Company.

Exclusive privilege for 50 years.

SECTION 9. *Be it further enacted, etc.*, That to carry the foregoing section into effect, they shall be authorized after the passage of this act, to lay pipes or conduits at the expense of the company, in any of the streets or alleys of said city of New Orleans, where the same may be required, in such manner as may produce the least inconvenience to the city or its inhabitants, *and provided, also*, That the company shall afterwards repair, with the least possible delay, the streets they have broken.

Power to lay pipes.

* See agreement of consolidation, article 6, page 16.
† See agreement of consolidation, article 5, page 16.
‡ See act No. 106, section 1, paragraph 5; also section 3, page 8.

Any persons destroying the property of the company to be liable for damages.

SECTION 10. *Be it further enacted, etc.*, That if any person or persons shall, by any means whatever, destroy any part of the gas pipes constructed or owned by the said company, or any of their works, buildings, fixtures, or machines, such person or persons shall, each of them, be liable for all damages occasioned thereby.

Power to purchase patents and patent rights.

SECTION 11. *Be it further enacted, etc.*, That the Crescent City Gas Light Company is authorized and empowered to manufacture gas from any and all materials suitable for such purpose, and shall have power to purchase and use any patent or patents, or the right to the same for the manufacture of such gas lights.

Works to be complete in ten years.

SECTION 12. *Be it further enacted, etc.*, That the works of said company must be complete and in condition to supply the proper amount of gas required for the city of New Orleans, within ten years from and after the date of the passage of this charter; and in case of failure the charter to be null and void.

50–7 SECTION 13. *Be it further enacted, etc.*, That all acts and parts of acts heretofore passed, conflicting in any manner with the provisions of this act of incorporation, are hereby repealed.

MORTIMER CARR,
Speaker of the House of Representatives.
OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved April 20th, 1870.

H. C. WARMOTH,
Governor of the State of Louisiana.

No. 106.

An act to amend and re-enact an act entitled An act to incorporate the Crescent City Gas Light Company, approved April 20, 1870, and to fix with more precision the time when said company shall go into operation, and to authorize said company to issue mortgage bonds, to change the time for election of directors, and to limit the price to be charged for gas.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened*, That an act entitled An act to incorporate the Crescent City Gas Light Company, approved April 20, 1870, be so amended—

1. That the board of directors of said corporation are hereby authorized by by-laws to determine the number of said directors, which shall consist of not less than three, nor more than nine persons; that any person who is the owner of ten shares of stock may be a director. Said board shall elect a president and vice president from their own body, and a secretary and treasurer, either members or not of their own body.

Directors and officers.

2. That the annual election for the board of directors shall take place on the second Tuesday of January of each year; ten days' notice of the same shall be given through two daily papers of the city of New Orleans.

Election for directors.

3. That said corporation shall have power to issue bonds, not exceeding in amount one million of dollars, to be secured by mortgage on the works and property of said corporation; that the time of maturity and rate of interest of said bonds shall be fixed by the board of directors.

50–8

Power to issue bonds.

4. That the said corporation shall not charge more than four dollars per thousand cubic feet for gas, except in case of war or blockade.

Price of gas.

5. That the date of expiration of the charter of the New Orleans Gas Light Company, as mentioned in section eight of the charter hereby amended, is hereby declared to be the first day of April, A. D., 1875.

Date of charter.

SEC. 2. *Be it further enacted, etc.*, That all the franchises and rights granted by the act hereby amended, and by this act, be and the same are

Franchises confirmed.

hereby confirmed unto the said Crescent City Gas Light Company, from the first day of April, A. D., 1875, for the term fixed in their charter.

That sections nine and twelve of the act hereby amended shall not be deemed at all affected by this act.

SEC. 3. *Be it further enacted, etc.*, That the term "city of New Orleans," as used in the eighth section of the act hereby amended, shall be deemed to include all parts of the present city of New Orleans, and any additions which may at any time be made thereto, not conflicting in any manner with the charter of the Jefferson City Gas Light Company. Territory defined.

That all parts of the act hereby amended which conflict with this act, and so far as they conflict with this act, be and the same are hereby repealed.

That all other acts, and all parts of other acts conflicting with this act, or with the act hereby amended, be and the same are hereby repealed.

CHARLES W. LOWELL,
Speaker of the House of Representatives.
C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved July 10, 1873.
WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

50–9 In the Supreme Court of Louisiana.

CRESCENT CITY GAS LIGHT COMPANY
versus
NEW ORLEANS GAS LIGHT COMPANY.

Appeal from superior district court.

Extracts from the decision of the court rendered February 1, 1875, affirming the validity of the acts incorporating the Crescent City Gas Light Company.

"Are the acts of 20th April, 1870, and 10th July, 1873, incorporating the plaintiff company and conferring on it the sole and exclusive privilege of making and vending gas in the city of New Orleans for fifty years, from 1st April, 1875, repugnant to article 114 of the constitution of 1868, Are the acts constitutional.

requiring the object of every law to be expressed in the title, and likewise repugnant to said constitution, in so far as the said acts create a monopoly in favor of plaintiff?

* * * * *

"We come now to the question whether the acts incorporating the plaintiff's company, and conferring on it the sole and exclusive right to make and vend illuminating gas in the city of New Orleans for fifty years, from 1st April, 1875, are repugnant to article 114 of the constitution of 1868, then in force, requiring the object or objects of every law to be embraced in its title. And here the main objection is as to the title of the act of 20th April, 1870; that its title, "An act to incorporate the Crescent City Gas Light Company," does not cover the monopoly contained in the 8th section thereof; that there is nothing in it indicating its purpose to grant it sole and exclusive privilege to make and vend gas in the city of New Orleans for fifty years, from 1st April, 1875.

Objections stated.

50–10 To this the plaintiff replies, that, under a similar title, a monopoly of the same kind was granted to the defendant in the charter of 1835, which was recognized by this court in the case of Paulding, (12 Rob., 378,) and which has been enjoyed by the defendant for nearly forty years without its validity having been questioned by any one. But the object of the act, as stated in the title, was "to incorporate the Crescent City Gas Light Company." To incorporate a company is to create it with certain powers and privileges, which need not be detailed, for if they were the title would be as long as the act. The title of the act disclosed the creation of a gas company; this was sufficient to cover the monopoly, or exclusive privilege to make and vend gas.

Title sufficient to cover monopoly.

"The precise question was before this court in The Louisiana Lottery Company *vs.* Richoux *et al.*, (23 A., 743,) and also in The State *ex rel.* Belden *vs.* Fagan, (22 A., 546,) where it was held that an exclusive privilege or monopoly could be granted under the usual title to incorporate a company. And in their decision it was held that the State could create a monopoly; that it could give the Crescent City Slaughterhouse Company the exclusive privilege to keep a slaughterhouse, and that it could confer on the Louisiana Lottery

State can create a monopoly.

Company the exclusive privilege to sell lottery tickets.

"However odious monopolies may be, the sole question for the court to determine in this case is, had the legislature the power under the constitution to grant to plaintiff the sole and exclusive right to manufacture and sell illuminating gas in the city of New Orleans for fifty years? If they had the power, they cannot be controlled by the judicial department in the exercise thereof, however unwisely they have chosen to employ it. Their responsibility is not to the court, but to the people, whose agents they were, for this unwise, unfair and arbitrary exercise of the power of legislation confided to them. In its own sphere the legislature is supreme, except when restricted by the constitution of the State, or of the United States.

Legislature supreme.

"Now what clause of these constitutions
50-11 has been violated in the case at bar? Is the bill of rights: All persons "shall enjoy the same civil, political and public rights and privileges, and be subject to the same pains and penalties," in any manner invaded? Is "life, liberty or the pursuit of happiness" of any person in the city of New Orleans assailed by the statute, granting the sole and exclusive privilege to plaintiff to operate gas works in New Orleans for fifty years? The right to operate gas works and to illuminate a city is not an ancient or usual occupation of citizens generally. No one has the right to dig up the streets and lay down gas pipes, erect lamp posts, and carry on the business of lighting the streets and the houses of the city of New Orleans, without special authority from the sovereign. It is a franchise belonging to the State, and in the exercise of the police power the State could carry on the business itself, or select one or several agents to do so. And as the legislature had the right in 1835, to grant the sole and exclusive privilege to the defendant company to make and vend gas in New Orleans for forty years, the legislature of 1870 had the same power to confer on the plaintiff the same privilege for fifty years from the termination of the grant to defendant. We, therefore, conclude that the grant of the monopoly complained of does not violate the constitution, and it is valid.

Gas lighting a public franchise belonging to the State.

Grant of monopoly is valid.

"In regard to the intervention of the city of

City's right of purchase.

New Orleans, we will remark that the right reserved by the State for it to become purchaser of the gas works, fixtures, machines, pipes, etc., at the expiration of the charter of the defendant, was not such a vested right that the State could not withdraw or recall without contravening that provision of the Constitution of the United States prohibiting a State from impairing the obligations of a contract. Conceding that the authority given to the city, if she saw fit, at the expiration of defendant's charter, to purchase the gas works, by implication conferred authority to operate said works, the State had the right to recall or withdraw the authority, as it did in the act of 1870, before the time for using the authority arrived.

Withdrawn by act No. 97.

And the grant of the sole and exclusive privilege to plaintiff to make and vend gas is utterly repugnant to the right of any other person or corporation to make and vend gas in New Orleans. And this grant, by implication, revoked or recalled any previous authority given the city to buy the gas works of the defendant on 1st April, 1875, for the purpose of making and vending gas.

50–12

"The powers and privileges granted by the State to the city of New Orleans, and other political corporations used in the administration of government, may be recalled or modified by the legislature at pleasure. And in doing so they violate no contract protected by the Constitution of the United States.

"We therefore conclude that the intervention of the City of New Orleans cannot be maintained.

Decree.

"It is, therefore, ordered that the judgment herein be set aside and annulled, and it is decreed that the plaintiff, The Crescent City Gas Light Company, have the sole and exclusive right to make and sell illuminating gas in the city of New Orleans for fifty years from April 1, 1875; that the act of March 1, 1860, extending the charter of the defendant, The New Orleans Gas Light Company, from April 1, 1875, until April 1, 1895, is unconstitutional and void; and that the defendant be enjoined and inhibited from setting up any claim thereunder, or from attempting to carry on the operation of gas works or the business of making and vending gas after the 1st April, 1875, or from in any manner impeding the plaintiff from the full enjoyment of its franchises, rights and privileges, arising under the acts of April 20,

Defendants enjoined.

1870, and July 10, 1873. It is further ordered that the intervention of the State be dismissed with costs, and the demand of the intervenor, The City of New Orleans, be rejected with costs of its intervention. It is further ordered that the defendant pay costs of both courts."

State intervention dismissed.

50-13 No. 157.

An act to authorize the consolidation of business or manufacturing corporations or companies.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened,* That any two business and manufacturing corporations or companies now existing under general or special law, whose objects and business are in general of the same nature, may amalgamate, unite and consolidate said corporations or companies, and form one consolidated company, holding and enjoying all the rights, privileges, powers, franchises and property, belonging to each, and under such corporate name as they may adopt or agree upon. Such consolidation shall be made by agreement in writing, by or under the authority of the board of directors, and the assent of the owners of at least three-fifths of the capital stock of each of said corporations or companies; and a certificate of the fact of such consolidation, with the name of the consolidated company, shall be filed and recorded in the office of the secretary of state; *Provided,* No such consolidation shall in any manner affect or impair the right of any creditors of either of said companies. In the agreement of consolidation the number of directors of the consolidated company shall be specified, and the capital stock may be any amount agreed upon by the companies or corporations, and set forth in the articles of consolidation.

SECTION 2. *Be it further enacted, etc.,* That all laws or parts of laws conflicting in any manner with the provisions of this act, be and the same are hereby repealed, and that this act shall take effect from and after its passage.

CHAS. W. LOWELL,
Speaker of the House of Representatives.
C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved December, 12, 1874.

WM. P. KELLOGG,
Governor of the State of Louisiana.

50–14 *Articles of Consolidation.*

An agreement to consolidate "The New Orleans Gas Light Company" and "The Crescent City Gas Light Company" into one company under the name of "The New Orleans Gas Light Company," by virtue of act No. 157, of the General Assembly of the State of Louisiana, approved December 12, 1874.

The president and board of directors of "The New Orlears Gas Light Company," and the president and board of directors of "The Crescent City Gas Light Company," availing themselves of the provisions of an act of the General Assembly, No. 157, approved December 12, 1874, entitled "An act to authorize the consolidation of business or manufacturing corporations or companies," do hereby, on this 29th day of March, in the year 1875, enter into the following agreement of union, amalgamation and consolidation, which is to become final and binding whenever the same shall receive the assent of the owners of three-fifths of the capital stock of each of said corporations.

Agreement to consolidate.

Name of consolidated company.

ARTICLE 1. The objects and business of the two companies being of the same nature, the amalgamating companies shall form one consolidated company, under the name and style of "The New Orleans Gas Light Company."

Capital stock $10,000,000.

$3,750,000 paid up.

ART. 2. The capital stock of the consolidated company is hereby fixed at ten million dollars, ($10,000,000), of which the sum of three millions seven hundred and fifty thousand dollars, ($3,750,000,) represented by thirty-seven thousand five hundred (37,500) shares, of one hundred dollars ($100) each, is to be considered as, and is hereby declared to be full paid, at the ratification of this agreement; and the residue of six millions, two hundred and fifty thousand dollars, ($6,250,000), may be issued in such sums, and at such times as the board of directors may deem proper, from any accumulated earnings invested in works or plant during the operations of the consolidated company; such issues of stock to be distributed *pro rata* among the stockholders of the consolidated company.

Directors may issue the residue *pro rata* from time to time.

50–15 ART. 3. The entire number of shares of stock issued to this date by the New Or-

leans Gas Light Company is nineteen thousand eight hundred, (19,800), of one hundred dollars ($100) each; and the owners of said shares are entitled under this agreement to two millions five hundred thousand dollars, ($2,500,000) of the full paid stock of the consolidated company; that is to say, twenty-five thousand (25,000) shares are to be distributed *pro rata* among the owners of said nineteen thousand eight hundred (19,800) shares in the manner following: The certificates of stock now held by the owners of said nineteen thousand eight hundred (19,800) shares are hereby accepted, adopted and recognized and considered as certificates of stock issued by the consolidated company, representing nineteen thousand eight hundred shares (19,800) of the twenty-five thousand (25,000) shares allotted under this agreement to the stockholders of the New Orleans Gas Light Company, and the residue of said twenty-five thousand (25,000) shares of stock of the consolidated company, to-wit: five thousand two hundred shares (5,200) are to be issued in new certificates, and delivered to the owners of said nineteen thousand eight hundred (19,800) shares of the New Orleans Gas Light Company, *pro rata* to each stockholder, in proportion to the amount of stock held by him.

Stockholders of old company entitled to 25,000 shares of consolidated stock.

Old certificates of stock recognized as certificates of consolidated company.

New certificates for 5,200 shares to be issued *pro rata*.

ART. 4. The entire stock of the Crescent City Gas Light Company issued at this date is three million dollars, ($3,000,000) represented by thirty thousand (30,000) shares of one hundred dollars ($100) each. All certificates for stock issued by the said Crescent City Gas Light Company are hereby annulled and cancelled, and considered as of no legal effect, or in any manner binding on the consolidated company, to which company the said cancelled certificates, together with the archives and rights and property of said Crescent City Gas Light Company are to be transferred and conveyed and surrendered upon the ratification of this agreement; and in lieu thereof, there shall be issued to Henry Y. Attrill, as
50–16 representative of all the stockholders of the Crescent City Gas Light Company, and at their request, certificates for twelve thousand five hundred (12,500) shares of full paid stock of the consolidated company, amounting in the aggregate to one million two hundred and fifty thousand dollars, ($1,250,000); the same being the

All certificates of stock issued by Crescent City Company annulled and cancelled.

Cancelled certificates, archives and property of Crescent City Co. to be surrendered to consolidated Co.

New certificates for 12,500 shares in consolidated company to be issued to H. Y. Attrill representing stockholders of Crescent City Company.

proportional part of the three million seven hundred and fifty thousand dollars ($3,750,000) of full paid stock assigned and allotted under this agreement to the stockholders of the Crescent City Gas Light Company.

Dividend in July, 1875, payable only upon old stock of N. O. Gas Light Company.

ART. 5. A dividend of six per cent. is to be made on July 1, 1875, payable only to the stockholders holding the certificates for said nineteen thousand eight hundred (19,800) shares of stock heretofore issued by the New Orleans Gas Light Company; and on January 1, 1876, a dividend of six per cent. is to be made among all the stockholders of the consolidated company, from the actual nett profits realized between July 1st and December 31, 1875, together with any excess of profits remaining from the operations of the first half year, after paying the dividend above mentioned of July 1, 1875, to the nineteen thousand eight hundred (19,800) shares of the New Orleans Gas Light Company; and thereafter, regular semi-annual dividends are to be paid in January and July of each year, of six per cent. or more, in this city, or in the city of New York, (in such manner as may be prescribed by the by-laws of the company,) at the option of the stockholder; *Provided*, That no dividend shall in any event, exceed in amount the actual nett profits of the company, after deducting therefrom a proper provision for depreciation, maintenance, extensions and contingencies; and in case the nett earnings do not afford a dividend of six per cent. the dividend shall be made of the amount actually earned; but extra dividends may be made from time to time, if earned.

Dividend in January, 1876, and thereafter, payable upon the whole consolidated stock.

Dividends to be 6 per cent. or more semi-annually in January and July.

Payable in N. O. or N. York.

Dividends not to exceed nett profits.

Extra dividends.

Directors.

ART. 6. The board of directors of the consolidated compano shall consist of seven members, four of whom shall constitute a quorum; and the regular elections of directors shall take place at the time specified, and in the manner provided in section 1, of the act of July 10, 1873, amending the charter of the Crescent City Gas Light Company; each share of stock represented by the owner or his proxy being entitled to one vote, and the holder of ten shares shall be eligible as a director. Until the next regular election, said board shall consist of the following named stockholders, viz: James Jackson, B. Biscoe, Charles Macready, John Geddes,

50–17

Elections for directors.

Each share entitled to one vote.

James W. Burbridge, Duncan F. Kenner, and Henry Y. Attrill.

The board of directors shall have power to make and prescribe such by-laws, rules and regulations as shall appear to them needful and proper; and shall appoint as many officers and clerks and assistants as may be necessary for carrying on the business and affairs of the company, allowing them such salaries as they may see fit; and shall have the general management, control and administration of the property and affairs of the consolidated company.

Directors to make by-laws.

Employ clerks, etc.

Fix salaries.

ART. 7. The stockholders of the present New Orleans Gas Light Company, are entitled to whatever accumulated surplus said company may possess on April 1, 1875, to be distributed *pro rata* among the holders of the nineteen thousand eight hundred (19,800) shares of stock of the present New Orleans Gas Light Company; and the right to dividends from said surplus shall be appurtenant to the said nineteen thousand eight hundred shares of stock.

Stockholders of old company entitled to surplus existing Ap'l 1, 1875.

ART. 8. The gas works, machinery, main pipes, service pipes, meters, lamps erected, and all other property actually in use for the business of gas manufacture and distribution on April 1, 1875, including all real estate in New Orleans, (except the building No. 159 Common street,) belonging to the New Orleans Gas Light Company, as well as all the franchises, powers, privileges and property of the Crescent City Gas Light Company, especially the exclusive privilege of making and vending gas lights in the city of New Orleans for fifty years, from April 1, 1875, granted to the Crescent City Gas Light Company by act approved April 20, 1870, and confirmed by act approved July 10, 1873, are hereby transferred to and vested in the consolidated company, which is authorized to use the property aforesaid, and operate under the charter of the said Crescent City Gas Light Company. But this transfer is not intended to include the surplus of the New Orleans Gas Light Company mentioned in article 7, of this agreement, which said surplus consists of the building No. 159 Common street, all stocks, bonds, mortgages and other evidences of debt from the city of New Orleans and private parties and companies, over and above cash liabilities on April 1st, 1875, also surplus stocks of

Property transferred to consolidated company.

Exclusive privilege transferred to consolidated company.

50–18

Surplus of old company defined.

coke, shells, new retorts, gas pipes, meters and other materials purchased in anticipation of future needs, on hand April 1, 1875, except coal; the stock of coal then on hand being transferred to the consolidated company as an offset against all amounts for which the New Orleans Gas Light Company is liable to consumers of gas as deposits for security of bills; which liability is hereby assumed by the consolidated company.

Stock of coal on hand to offsett deposits for gas.

ART. 9. The consolidated company shall supply with gas the charity hospital free of all expense until otherwise ordered by the board of directors; and gas shall be furnished to all orphan asylums situated on the lines of mains of the company at the price of two dollars ($2 00) per 1000 cubic feet, unless otherwise ordered by the directors.

Charity hospital.

Orphan asylums.

ART. 10. The consolidated company shall not charge more than four dollars ($4 00) per 1000 cubic feet of gas, except in case of war or blockade. The price of gas is, for the present, fixed at four dollars ($4) per 1000 cubic feet, subject to change by the board of directors; and the directors may, from time to time, fix a rate of discount for prompt payment of bills, as they may deem proper. The rate of discount is, for the present, established at fifty cents per 1000 cubic feet, upon gas consumed through meters from and after May 1st, 1875.

Price of gas.

Discount for prompt payment.

ART. 11. The officers, clerks and servants of the present New Orleans Gas Light Company shall become, *ipso facto*, the officers, clerks and servants of the consolidated company; and they are hereby confirmed in their respective positions and salaries and terms of office, as hitherto established, their terms of service in behalf of the present New Orleans Gas Light Company being recognized and considered as if spent in the service of the consolidated company. The consolidated company may provide for the retirement on a pension equivalent to half-pay of all its faithful officers, clerks and servants, when they shall have been in its service or that of the present company, or both, for the full term of twenty years; or proportionately for a shorter period, when they shall become superannuated or incapacitated for duty from accident or disease, while in the service of the company.

50–19

Officers, clerks, etc., of the old company retained.

Provision for pensions.

ART. 12. That all the right, title and interest

of the present New Orleans Gas Light Company in the property included in the surplus mentioned in article 7, and described in article 8, is hereby vested in the consolidated company as trustee for the stockholders of the present New Orleans Gas Light Company, to be administered and disposed of by the board of directors of the consolidated company for the benefit of the holders of the aforesaid nineteen thousand eight hundred (19,800) shares of the stock of the present New Orleans Gas Light Company; and said property which is susceptible of division in kind, shall be at once divided in kind, except the real estate and materials on hand, and mortgage notes and claims. The real estate is to be sold on reasonable terms; and the mortgage notes and claims to be collected and proceeds divided as collected. The said board of directors shall have power to adjust, settle and compromise claims and mortgage notes; the materials on hand may be disposed of to the consolidated company or otherwise as the board of directors may determine.

Surplus to be administered by directors of consolidated company.

Division in kind.

Real estate.

Mortgage notes.

Materials.

ART. 13. The board of directors of the consolidated company are authorized to carry out the details of this consolidation and to regulate all matters for this purpose, not specially provided for in this agreement.

Directors to carry out details of consolidation.

50-20 In testimony whereof, James Jackson, president, and B. Biscoe, Charles Macready, John Geddes, and James W. Burbridge, directors of the New Orleans Gas Light Company;

And Henry Y. Attrill, president, and Charles Gibson, Thomas L. Wibray, and J. M. Conway, directors of the Crescent City Gas Light Company, have hereunto set their respective names, on the day and year above written, and the seals of said respective companies are hereto affixed.

JAMES JACKSON, *President.*
B. BISCOE.
CHAS. MACREADY.
JOHN GEDDES.
J. W. BURBRIDGE.

[N. O. Gas Light Company Seal.]

HY. Y. ATTRILL,
Pres. C. C. G. L. Co.
C. GIBSON.
THOS. L. WIBRAY.
J. M. CONWAY.

[Crescent City Gas Light Co. Seal.]

Ratification of the Agreement of Consolidation by the Stockholders of the New Orleans Gas Light Company.

Office of New Orleans Gas Light Company, corner of Common and Baronne streets.

Be it remembered, that on this day, to-wit: Friday, the ninth day of April, 1875,

At a general meeting of the stockholders of this, the New Orleans Gas Light Company, convened pursuant to a resolution of the board of directors of said company, due notice of which was given by advertisement published in the daily papers of this city for ten days previous to the present date, for the purpose of deliberating whether they would or would not assent to and ratify certain articles of consolidation agreed upon by and between the president and directors of this, the New Orleans Gas Light Company of the one part, and the president and directors of the Crescent City Gas Light Company of the other part, entered into under the provisions of an act of the General Assembly of Louisiana, approved December 12, 1874, No. 157, entitled "An act to authorize the consolidation of business or manufacturing corporations or companies," James Jackson was called to the chair and Theobald Forstall appointed secretary.

50–21

The said agreement of consolidation, the original text of which is of record, on pages 435 to 439 of the record book of this company, having been read to the meeting, the chairman submitted the following resolution of the board of directors, adopted April 7, 1875:

Resolved, That articles of consolidation agreed upon between the president and directors of the New Orleans Gas Light Company, and the president and directors of the Crescent City Gas Light Company, under the provisions of act No. 157, approved December 12, 1874, be and are hereby presented to the regular meeting of stockholders to be held on April 9, 1875, with the recommendation of the preliminary meeting held on April 6th, for their assent and ratification.

The following resolutions were then offered, seconded and adopted:

Resolved, That this meeting do approve and assent to the agreement of consolidation just read, as engrossed in the record book of this company.

Resolved, further, That each stockholder attach his signature to these resolutions, as recorded in the record book of the company, with the number of shares owned or represented by him.

[Signed by stockholders representing 14,359 shares of the company's stock.]

And the said stockholders, representing fourteen thousand three hundred and fifty-nine shares of the capital stock of the company, being more than three-fifths of the same, and no stockholder having

voted in the negative, it is thereupon declared that by the will of the stockholders, so as aforesaid expressed, the said agreement of consolidation is assented to and ratified; and it is thereupon
50–22 therefore ordered that an original copy of these proceedings be transmitted to the secretary of state to be by him deposited in the archives of his office, to the end that in conformity with the provisions of the act of the General Assembly, No. 157, aforesaid due and public notice be given of the ratification of the said agreement by stockholders representing more than three-fifths in value of the capital stock of said company.

Adjourned.

JAMES JACKSON, *Chairman.*

Attest: THEOB'D FORSTALL, *Secretary.*

Ratification by the Stockholders of the Crescent City Gas Light Company.

Stockholders' meeting.

Office Crescent City Gas Light Company, No. 50 Camp street.

APRIL 9, 1875—6 o'clock p. m.

The meeting called for 10 o'clock, this a. m., having been adjourned until this hour, on account of the absence of Mr. H. Y. Attrill, (holding a large majority of the stock) was called to order by the appointment of T. L. Wibray as chairman, and J. M. Conway, as secretary, all the stockholders being present.

Mr. H. Y. Attrill reported as follows to the meeting: That the board of directors of this company had effected an amalgamation with the New Orleans Gas Light Company, under the provisions of act 157, 1874: and that the agreement was now presented to the stockholders for their assent and ratification.

After having been read and considered: on motion, the action of the board of directors was approved and the agreement for amalgamation was ratified and assented to; thirty thousand shares voted aye, against, none.

The president was authorized to do all things necessary to carry out and perfect said agreement, and all matters arising out of the same, said agreement being the same as hereinbefore copied.

On motion, the meeting then adjourned.

THOS. L. WIBRAY, *Chairman.*

J. M. CONWAY, *Secretary.*

50–23 & 24 *Certificate of the Secretary of State.*

State of Louisiana, office of secretary of state.

NEW ORLEANS, *April* 12, 1875.

I hereby certify that the above and foregoing is a true copy of the "agreement of consolidation" between the New Orleans Gas Light Company, and the Crescent City Gas Light Company, with proceedings of the general meetings of the stockholders of the New Orleans Gas Light Company and the Crescent City Gas Light Company, held April 9, 1875, to ratify said agreement, filed in this office on the 10th day of this month.

Given under my hand and the seal of the State, this [SEAL.] twelfth day of April, A. D. 1875, and of the Independence of the United States the ninety-ninth.

P. G. DESLONDE,
Secretary of State.

50–25 *By-Laws of the New Orleans Gas Light Company, Adopted by the Board of Directors at their Meeting, November 16th, 1875.*

CHAPTER I.

Of Meetings of the Stockholders.

Annual meeting.

SECTION 1. A meeting of the stockholders shall be held annually on the second * Tuesday in January, between the hours of 10 a. m. and 2 p. m., at the office of the company, for the election of seven directors to serve during the ensuing year, and until their successors shall have been elected and qualified.

Ten days' notice to be given.

Postponement.

SEC. 2. Due notice of said meeting shall be given by advertisement for ten days, in two daily newspapers of the city of New Orleans; and if for any reason, the said election should not take place on the day fixed therefor, the meeting for this purpose shall be held on another day not more than ten days thereafter.

Special meetings may be called.

Object must be stated in the call.

SEC. 3. Special meetings of the stockholders may be called by the board of directors, when necessary, of which ten days' notice shall also be given in two daily newspapers. The object of every such special meeting shall be clearly expressed in said notice; and no subject shall be considered at the meeting thus called, other than that stated in said notice.

* Act No. 106, section 1, § 2.

50-26

CHAPTER II.

Of Election for Directors.

SECTION 1. The annual election for directors shall be held under the superintendence of three commissioners, stockholders of the company, appointed by the outgoing board of directors, outside of their own body, at their regular meeting in December preceding the election. Written notice of their appointment shall be sent to the commissioners; and in case any of them shall neglect or refuse to serve, the president shall, in writing, appoint another in his place.

Three commissioners to be appointed.

President may fill a vacancy.

SEC. 2. The stock transfer books shall be closed one week before the election, and the secretary shall make up, for the use of the commissioners, a correct list of all the stockholders, and of the number of shares held by each of them.

Secretary to prepare a stock list.

SEC. 3. * The election shall be by ballot; each share of stock represented by the owner or his proxy shall be entitled to one vote; and the holder of ten shares, in his own name, is eligible as a director. Upon each ballot presented, the commissioners shall mark plainly in ink, the number of shares to which the voter is entitled, as set down in the stock list furnished by the secretary; and they shall deposit the same in a box previously emptied and sealed by them.

Every share entitled to one vote.

Owner of ten shares eligible as director.

Ballot-box to be sealed.

SEC. 4. The voting shall cease at 2 o'clock, p. m., and the commissioners shall immediately count the ballots. The seven persons voted for, who being eligible, shall have received the greatest number of votes, shall be declared elected directors for the ensuing year; and the commissioners shall draw up in writing, duplicate certificates of said election over their signatures; stating the names of all candidates voted for, the number of votes received by each, and the total number of votes cast.

Candidates elected.

Duplicate certificates.

SEC. 5. The result of said election shall be published for one week in two daily newspapers of this city, and the secretary shall notify, in writing, each of the directors elect of his said

50-27 election, and of the time and place when and where they shall meet together to organize themselves into a board.

Result of election to be published.

Notice to directors elect.

* Act No. 106, section 1; agreement of consolidation, art. 6.

CHAPTER III.

Of the Board of Directors.

Functions of the board.

SECTION 1. The general management, control and administration of the property and affairs of the company is vested in the board of directors,* and shall be exercised at the office of the company, in the city of New Orleans.

Quorum.

SEC. 2. There shall be seven directors, four of whom shall constitute a quorum for the transaction of business.†

Statement of affairs.

SEC. 3. On the second Tuesday in January, of each year, at the annual meeting for the election of directors, the outgoing board of directors shall lay before the stockholders a statement of all the affairs and concerns of the company for their information.‡

Certificate of election to be recorded.

SEC. 4. On the third Tuesday in January after said election, the outgoing board of directors shall hold their last regular meeting, and the secretary shall read to the board the certificate of election of the directors elect, which shall be entered in the journal of said meeting.

Annual election of officers.

SEC. 5. On the first Monday in February, the directors elect shall assemble at 12 o'clock, m., and organize by the election of a president and vice president from their own body, and a secretary and treasurer either members or not of their own body.§

Committee to examine accounts.

SEC. 6. The president shall, as soon as said organization is effected, appoint a committee of three directors, who shall examine the books and accounts of the company, and verify the cash and other assets. Said committee shall report, in writing, at the next regular meeting of the board, or sooner at a special meeting, if necessary, the result of their examination, and said report shall be recorded in the journal.

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Regular meetings.

SEC. 7. The board of directors shall hold their regular meeting on the third Tuesday of every month, except when this day shall be a holiday; in which case the meeting shall take place on the following day. A journal of pro-

*Agreement of consolidation, art. 6.
†Agreement of consolidation, art. 6.
‡Act No. 97, section 7.
§Act No. 106, section 1, § 1.

ceedings at all meetings shall be kept by the secretary, or in his absence, by the treasurer.

SEC. 8. Special meetings of the board may be called at any time by the president, or, in his absence, by the vice president, whenever the interests of the company may require them. Special meetings.

SEC. 9. All meetings of the board shall be governed as far as possible by the rules of "Jefferson's Manual;" and at every stated meeting the following order of business shall be observed: Order of business.

1st. Reading and approving the minutes of former proceedings.

2d. Reports of general superintendent and officers.

3d. Reports of committees.

4th. Election to fill vacancies.

5th. Unfinished business.

6th. New business.

SEC. 10. If any director shall cease to be a stockholder, his office shall become vacant*; and when any vacancy shall occur in the board, by death, resignation or otherwise, the remaining directors shall, at the first ensuing regular meeting, elect a director from among the qualified stockholders, to fill the vacancy for the unexpired term. Vacancies. How filled.

SEC. 11. The board of directors shall declare semi-annual dividends† at their regular meetings in June and December, of the nett earned profits of each half year, in *in* accordance with article 5 of the agreement of consolidation. Semi-annual dividends.

50-29 CHAPTER IV.

Of the Officers of the Company.

SECTION. 1. The officers of the company are declared to be: Officers of the company.

A president,
A vice president,
A general superintendent,
A secretary,
A treasurer,
A manager of the works,
An auditor of the works.

SEC. 2. The president, vice president, treasurer and secretary shall be elected annually by the Elective officers.

*Act No. 97, section 5.
†Act No. 97, section 7.

board of directors, as hereinbefore provided in chapter III, § 5.

Other officers—how appointed.

SEC. 3. All other officers shall be appointed by the board, as vacancies occur, and shall hold their office during good behavior; but no officer shall be dismissed or appointed except by the affirmative vote of a majority of the whole number of directors.

Bonds and sureties.

SEC. 4. All officers and employees handling cash belonging to the company, shall give such bonds for the faithful performance of their duties, as the board of directors may determine. But no director, or officer, or employee of the company shall be received as surety upon any bond so given.

Officers not to contract debts.

SEC. 5. No debt or liability, beyond the necessary, legitimate business and current expenses of the company, shall be contracted by the president or any other officer, without the consent of the board of directors, previously obtained at a regular meeting.

No officers to be interested pecuniarily in any transaction for the company.

SEC. 6. Neither the president nor any other officer or employee of the company shall be pecuniarily interested, directly or indirectly, in any supplies or materials purchased by the company; nor shall they receive any brokerage, commissions, discounts or perquisites of any kind, on account of contracts or purchases made in its behalf.

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CHAPTER V.

Of the President and Vice President.

To preside at all meetings.

SECTION 1. The president shall preside at all meetings of the board of directors, and shall be "*ex officio*" a member of all its committees.

Sign all instruments and contracts.

SEC. 2. He shall sign all certificates of stock, contracts, instruments or papers in writing, to which the seal of the company is required to be affixed; and he shall countersign all checks, warrants, notes or drafts drawn by the treasurer, and all bills, vouchers and pay rolls.

Make all purchases.

SEC. 3. He shall make or approve all purchases which are required for the company, and shall exercise a general supervision over the business of the company, and the conduct of its officers and employees.

Suspend officers.

SEC. 4. He shall suspend from duty any officer for neglect, incompetency, insubordination or in-

temperance, and shall report such suspension to the board at its next regular meeting, for final action.

SEC. 5. The vice president in the absence or during inability of the president, from illness or other cause, shall have the same powers and fulfil the same duties as the president.

Duties of the vice president.

CHAPTER VI.

Of the General Superintendent.

SECTION 1. The general superintendent shall be the executive officer of the company, under the direction of the president, and shall exercise a daily supervision and control over every department of the company's business.

The executive officer.

SEC. 2. He shall have his office at the office of the company, and shall visit the works daily.

SEC. 3. He shall attend all meetings of the board of directors, and make regular monthly reports of the operations of the company.

He shall attend all meetings.

SEC. 4. He shall inform himself by correspondence, experiment or otherwise, of the value of all new processes in the manufacture, purification or distribution of gas, the results of which information he shall from time to time communicate to the board.

Seek improvements in manufacture.

50-31 SEC. 5. He shall examine all requisitions for materials or supplies, and all pay rolls, bills and vouchers; and affix to each of them his approval in writing, before they are submitted to the president.

Examine and approve all vouchers, etc.

SEC. 6. He shall keep a daily journal, open to the inspection of the directors, in which he shall enter abstracts or memoranda of important matters, contracts, agreements, etc.

Keep a diary.

SEC. 7. At the annual meeting of the board, on the first Monday in February, he shall lay before the directors a full report of the operations of the company during the year ending December 31st, with a statement of the condition of the works, and an estimate of income, expenditure and profits for the ensuing year, and such recommendations as he may think necessary. He shall also prepare statements of the operations of each half-year, which shall be submitted to the board at their regular meetings in June and December.

Make annual reports.

Semi-annual statements.

CHAPTER VII.

Of the Secretary.

Journal of proceedings.

SECTION 1. The secretary shall attend all meetings of the board of directors, and keep the journal of their proceedings. He shall issue all notices of meetings of the board and of the stockholders.

List of officers and salaries.

SEC. 2. He shall prepare and lay before the board, annually, at their first meeting in February, a list of all the officers, clerks and employees paid by the year, with their respective salaries.

Keep the books.

SEC. 3. He shall keep the general books of the company, and the stock and transfer books, and shall be the custodian of the corporate seal of the company.

Audit accounts.

SEC. 4. He shall countersign all certificates of stock, audit all accounts which do not come within the scope of the auditor of the works, and certify to their correctness.

Verify cash returns.

SEC. 5. He shall audit all returns made by the collectors and cash clerks, and verify the accounts of the treasurer.

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SEC. 6. He shall keep a register of employees in which shall be entered the name, residence, rate of wages, occupation, date of employment and discharge, and the standing of every workman and laborer employed by the company.

Balance sheets.

SEC. 7. He shall make up monthly a trial balance sheet of the ledger; a statement of profits, and an exhibit of unpaid bills in each collector's district.

Records.

SEC. 8. He shall keep records of the daily and monthly station reports, with such other statistical tables as may be from time to time prescribed by the general superintendent.

Annual balance and statements.

SEC. 9. He shall close and balance the general books annually on the first of January, and make up a statement of the income, expenditure, and profits of the year, together with a detailed inventory of all the property, assets and liabilities of the company.

CHAPTER VIII.

Of the Treasurer.

Receive and disburse all funds.

SECTION 1. The treasurer shall receive and disburse all moneys for account of the company, and have charge of its valuable papers and securities

Daily deposits.

SEC. 2. He shall deposit daily in such chartered bank or banks as the board of directors may select, all moneys received by him for account of the company.

Payment by bank check.

SEC. 3. He shall make all payments (except when the amount is less than ten dollars,) by bank checks, which shall be countersigned by the president.

Petty bills.

SEC. 4. He shall pay in cash all bills less than ten dollars in amount, and every such payment shall be entered in detail in a petty-bill book.

Receipts.

SEC. 5. He shall take a receipt in writing in the receipt book of the company, for each and every payment made by him.

To pay none but certified vouchers.

SEC. 6. He shall pay no bills, invoices, pay-rolls or any other claims against the company, until they shall have been duly certified by the auditor of the works, or by the secretary, according to the nature of the claim, and approved by the president and general superintendent.

Daily cash abstract book.

50–33 SEC. 7. He shall keep an abstract book in which shall be daily entered an account of all receipts and disbursements, in order that the exact cash balance on hand may be daily ascertained.

Monthly statements.

SEC. 8. He shall make up, on the first of every month, a classified statement of receipts and disbursements, which shall be recorded in the balance book of the company.

CHAPTER IX.

Of the Manager of the Works.

Manufacture etc., of gas.

SECTION 1. The manager shall have charge of the manufacture, purification and delivery of the gas from the gas holders. He shall employ and control the labor necessary to operate the works, subject to the regulations hereinafter provided, and shall be responsible to the general superintendent for the proper fulfilment of his duties.

SEC. 2. He shall reside at the works; and remain upon the premises during the day, and occasionally during the night shift, so as to enforce constant efficiency in every department under his care.

SEC. 3. He shall confer daily with the general superintendent upon all matters connected with the station, and shall make monthly reports, in

writing, of the condition of the works; and a general report, annually on the 1st of January, of his operations, with such suggestions as may seem proper to be made.

CHAPTER X.

Of the Auditor of the Works.

Keep station book.

SECTION 1. The auditor shall keep the books and records of the station, and make up the weekly pay-rolls of the men employed at the works and in the streets.

Register of workmen.

SEC. 2. He shall keep a register in which shall be entered the names, residence, occupation, rate of wages and standing of every workman employed at the station and in the streets, with the date of his employment and discharge; and no workman shall be included in any pay-roll, until his name shall have been reported to the auditor for entry in said register. All changes, whether by addition or discharge, in the number of men employed, shall be reported day by day to the secretary.

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All changes to be reported to the secretary.

Pay rolls.

SEC. 3. He shall, in person, receive from the treasurer the sum required for wages according to the pay-roll, and pay to each workman in person, or to his proper representative, the amount entered to his credit.

Daily reports.

SEC. 4. He shall keep daily accounts of the consumption of coal, lime, etc.; the production and consumption of gas and deliveries of coke, a report of which shall be made to the secretary.

Monthly reports.

SEC. 5. He shall keep detailed accounts of all materials and supplies received and used at the station and in the streets, a monthly report of which shall be made to the secretary; and annually, on the 1st of January, he shall prepare a detailed inventory of all materials and supplies remaining on hand from actual inspection, and of all tools and implements in the hands of the several foremen.

Annual inventory.

Requisition for materials.

SEC. 6. He shall make requisition in writing to the general superintendent for all materials and supplies required for the works; and no purchase shall be made in the name of the company until the requisition for the same shall have been approved by the general superintendent.

SEC. 7. He shall have charge of all materials

and supplies in stock, and shall make no deliveries of same except upon a written requisition from the manager, or other proper officer, and said requisition shall be dated and numbered, and entered in a book for convenient reference. Deliveries of materials.

SEC. 8. He shall audit and certify all bills, invoices and accounts relating to the station, before transmitting them for approval to the general superintendent. Audit of accounts.

SEC. 9. He shall make no deliveries of coke, tar, or other products from the works, except upon an order issued from the office of the company; and no cash transactions of any kind shall be made at the station, except the payment of wages above provided for. Deliveries of coke, etc.

50-35 CHAPTER XI.

Of the Other Employees of the Company.

SECTION 1. In addition to the officers mentioned in chapter IV, section 1, the regular employees shall be as follows:

(*a*.) In the financial department:
One deposit clerk.
One application clerk.
One cash clerk.
One coke clerk.
One bill clerk.
One assistant clerk.
Five collectors.

(*b*.) In the gas-distributing department:
One inspector of mains, services and fittings.
One inspector of meters.

SEC. 2. These employees shall be appointed by the president with the consent of the board of directors, and shall hold their office during good behavior; but may be summarily discharged by the president for neglect, insubordination, intemperance or general inefficiency. Tenure of office.

SEC. 3. The duties of said employees shall be prescribed by the general superintendent, in a Code of Rules to be approved by the president, and printed for the use of employees; subject, however, to revision and amendment from time to time as the exigencies of business may require. Duties of employees.

SEC. 4. Any officer or employee of the company, handling its funds, who shall embezzle or wrong- Embezzlement

fully appropriate any said funds, shall be prosecuted in a criminal suit.

Office hours.

SEC. 5. The office hours of the company for business with the public shall be from 9 a. m. to 3 p. m., and from 5 to 7 p. m., except upon legal holidays, when the office shall be closed at 12 o'clock, m. All officers and employees, however, shall devote such additional time as may be necessary to the completion of the daily business; and all books shall be regularly posted day by day.

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CHAPTER XII.

Of Salaries and Pensions.

SECTION 1. The salaries of all officers and employees shall be fixed by the board of directors, and shall be subject to revision, annually, at the first meeting in February.

SEC. 2. All salaries and pensions shall be paid by the treasurer, on the last day of every month; and no officer or employee, paid by the month, shall draw any portion of his current salary before the regular date of payment.

CHAPTER XIII.

Of Dividends.

SECTION 1. All dividends shall be payable January 15th, and July 15th, at the office of the company in the city of New Orleans, or with current exchange, at such bank in the city of New York as the board of directors shall appoint, and it shall be optional with any stockholder to receive his dividends at either place.

SEC. 2. All stockholders electing to receive their dividends in the city of New York, shall notify the secretary of the company, in writing, of such decision, not less than thirty days before the date of payment of the next dividend; and shall register their names, with the number of shares of stock held by them, and the date and number of their certificate at the bank aforesaid, in the city of New York; and each stockholder, whenever presenting himself, in person or by an attorney, to receive a dividend, shall exhibit the said certificate of stock, and otherwise identify himself to the satisfaction of said bank.

SEC. 3. Any stockholder, registered in New York, who shall neglect to claim and receive a dividend within six months after the regular date of payment, shall lose his option of receiving said unclaimed dividend in New York, and must thereafter receive payment of same, at the office of the company, in New Orleans.

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CHAPTER XIV.

Of Transfers of Stock.

SECTION 1. All blank certificates of stock of the company, shall be bound in a book and numbered, and each certificate shall have a margin which shall remain in said book when the certificate is issued, and on which shall be entered by the secretary, (1) the number and date of each certificate issued; (2) the name of the person to whom; (3) the number of shares for which it is issued, and (4) the page in the stock ledger where posted; and a receipt for said certificate, which shall be signed by the person to whom it is issued when he or she receives it.

SEC. 2. All certificates of stock shall be signed by the president and countersigned by the secretary, and shall have the seal of the company impressed upon them.

SEC. 3. No transfer of stock shall be made, unless the certificate therefor previously issued shall have been surrendered to the company, with the word "Cancelled" written across its face, and signed and dated by the person surrendering the same; and no transfer of stock shall be valid unless made upon the books of the company by the person owning said stock, or by his, her or their legally constituted attorney, or in case of death, by their legal representatives.

SEC. 4. All powers of attorney, or probate powers to transfer stock, must be filed with the secretary, either in the original or in the form of a certified copy.

SEC. 5. No new certificate of stock shall be issued in the place of any certificate claimed to be lost or destroyed, unless proof shall be made by affidavit, and a notice of such loss or destruction shall have been published for six weeks in one of the daily newspapers of the city of New Orleans, requiring all persons to show cause why a new certificate should not be issued; and unless a bond, satisfactory to the president, shall be given to indemnify the company against all loss or damage by reason of the issue of a new certificate.

SEC. 6. Every certificate of stock issued in place of one alleged to be lost or destroyed, shall bear the same date and number as the one originally issued, and have legibly written across its face, that it is issued in the place of a certificate of the same date and number, which is alleged to be lost or destroyed.

50-38

CHAPTER XV.

Of By-Laws, Rules, and Regulations.

SECTION 1. The foregoing by-laws are established for the government of the company, as provided in the charter and articles of consolidation,* and all officers and employees are expected to comply with them.

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*Act No. 97, section 7. Agreement of consolidation, art. 6.

SEC. 2. They may be amended or modified by the board of directors; but any amendment or alteration must be proposed at a regular meeting, to be acted upon finally at the next regular meeting, and shall be adopted only upon the affirmative vote of the majority of all the directors.

SEC. 3. The general superintendent shall establish a system of rules and regulations to be approved by the board of directors, defining the practice of the company in its relations with gas-fitters and consumers, with regard to extensions of mains, service pipes, meter-setting, and the inspection of meters and fittings.

51 *Decision of Supreme Court of the United States, Offered in Evidence by Plaintiff.*

Filed January 30, 1901.

51½ Acts April 1, 1835, page 92.
Act No. 100—1845, p. 45, p. 59.
Act No. 105. Acts 1864. Page 66.

Decision of the United States Supreme Court.

THE NEW ORLEANS GAS-LIGHT COMPANY, Appellant, *vs.* THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY *et al.* | No. 18. October Term, 1885. Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

51–1 Supreme Court of the United States, October Term, 1885.

THE NEW ORLEANS GAS-LIGHT COMPANY, Appellant, *vs.* THE LOUISIANA LIGHT AND HEAT PRODUCING AND MANUFACTURING COMPANY *et al.* | No. 18. Appeal from the Circuit Court of the United States for the Eastern District of Louisiana,

1. The New Orleans Gas-Light Company, a corporation of Louisiana, formed by the union of a corporation of the same name with the Crescent City Gas Light Company, has, by its charter, the exclusive privilege of supplying gas to the city and people of New Orleans, by means of pipes, mains, and conduits laid, at its own cost, in the streets and other public ways of that city.

2. Before the adoption of the present constitution of that State, the legislature had authority to grant to a private corporation an exclusive privilege of that character, and such grant constitutes a contract, the obligation of which cannot be impaired by a State law.

3. The manufacture and distribution of gas by means of pipes, mains, and conduits, placed, under legislative authority, in the public ways of a municipality, is not an ordinary business, in which every one may engage, as of common right, upon terms of equality; but is a franchise relating to matters of which the public may assume control, and, when not forbidden by the organic law of the State, may be granted by the legislature, as a means of accomplishing public objects, to whomsoever, and upon what terms, it pleases.

4. The grant of the exclusive privilege in question is none the less a contract, because the manufacture and distribution of gas, when not subjected to proper supervision, may work injury to the public; for, such a grant does not restrict the power of the State to establish and enforce regulations, not inconsistent with the essential rights given to the company by its charter, which may be necessary for the protection of the public against injury, whether aris-
51-2 ing from the want of due care in the conduct of the business, or from an improper use of streets in laying gas-pipes, or from the failure of the grantee to furnish gas of the required quality and amount.

5. The constitutional prohibition upon State laws, impairing the obligation of contracts, does not restrict the power of the State to protect the public health, the public morals, or the public safety, as the one or the other may be involved in the execution of such contracts.

6. The provision in the present constitution of Louisiana abrogating the monopoly features of existing corporations, other than railroad corporations, is inoperative in respect of the charter of the New Orleans Gas-Light Company. The State can no more impair the obligation of a contract by her organic law than by legislative enactment; and the obligation of her contracts are as fully protected by the national constitution against impairment by legislation as are contracts between individuals exclusively.

[December 7th, 1885.]

Mr. Justice HARLAN delivered the opinion of the court:

The Louisiana Light and Heat Producing and Manufacturing Company, a corporation of Louisiana, was organized in the year 1881, by H. S. Jackson, W. Van Benthusen, and their associates, under a general law providing for the formation of corporations for certain purposes, among which are the construction and maintenance of works for supplying cities or towns with gas. These associates and their successors, transferees, and assigns, had previously been authorized, by an ordinance of the common council of New Orleans, passed January 25, 1881, for the period of fifty years, and upon specified conditions, to lay mains, pipes, and conduits in the streets, alleys, sidewalks, bridges, avenues, parks, gardens, and other places in that city, for the purpose of supplying the public with gas. Among the conditions was one to the effect that the rights and

privileges defined in the ordinance were granted and accepted without liability upon the part of the city to any other gas company to which franchises had been granted by legislative enactment. The consideration to be paid for these privileges was the sum of $20,000.

The benefit of this municipal grant having been transferred to the Louisiana Light and Heat Producing and Manufacturing Company,
and that corporation being about to proceed with the
51–3 construction of its mains, pipes, and conduits, the present
suit was commenced against it and its directors in the civil district court of the parish of New Orleans, by the New Orleans Gas-Light Company which had been created, as will be presently explained, by the consolidation of other corporations. The plaintiff claims to be entitled for the term of fifty years from April 1, 1875, to the sole and exclusive privilege of manufacturing and distributing gas in that city by means of pipes, mains and conduits laid in its streets, to such persons or corporate bodies as may choose to contract for the same. The relief asked is a decree perpetually enjoining defendant from digging up the streets, and other public ways or places of the city for the purpose of laying pipes, conduits, or mains for supplying illuminating gas, and from asserting any right to do so until after the lapse of fifty years from the latter date.

An application for an injunction having been denied, the suit was thereafter removed by the plaintiff into the circuit court of the United States, upon the ground that it was one arising under the Constitution of the United States. In the latter court a bill was filed, so as to conform to the general rules of equity practice.

A statement of the history of the corporations concerned in the before-mentioned consolidation is necessary to a clear understanding as well of the grounds upon which the court below proceeded, as of the questions argued in this court.

By an act of the legislature of Louisiana, passed April 1, 1835, the New Orleans Gas-Light and Banking Company was incorporated and was given "the sole and exclusive privilege of vending gas-lights in the city of New Orleans and its faubourgs and the city of Lafayette, to such persons or bodies corporate who may voluntarily choose to contract for the same;" to which end it was authorized to lay pipes or conduits at its own expense in any of the public ways or streets of those localities, having due regard to the public convenience. The right was reserved to the city, after the expiration of forty years, to buy such gas works as the company constructed and pay for the same in city bonds. If the city declined to purchase, then its bonds which the company had received in payment of its subscription of stock were to be renewed for twenty years.

By amendments of its charter made in 1845 and 1854, the
51–4 company's right to engage in banking was, by its consent,
withdrawn, and the remaining rights granted by the original act were continued to the corporation under the name of the New Orleans Gas-Light Company, to be enjoyed until April 1, 1875, when

its corporate privileges were to expire. This change was made subject to the condition that the company should assume all the debts and engagements of the original company, release its claims against the Charity hospital, and, during the continuance of its charter, furnish that institution with necessary gas and fixtures free of charge. By amendments made in 1860 its charter was extended to April 1st, 1895, the exclusive privileges granted by the original charter not, however, to exist beyond the time fixed in the act of incorporation.

By an act approved April 20th, 1870, another company, under the name of the Crescent City Gas-Light Company, was incorporated. The charter provided that that company, its successors and assigns, should, for fifty years from the expiration of the charter of the New Orleans Gas-Light Company, have the sole and exclusive privilege of making and supplying gas-lights in the city of New Orleans, by means of pipes or conduits laid in the streets, to such persons or bodies corporate as might voluntarily choose to contract for it. By a subsequent enactment, in 1873, it was given authority to issue bonds to an amount not exceeding $1,000,000, secured by mortgage of its works and property; and it was declared that the charter of the New Orleans Gas-Light Company should expire on April 1, 1875, from which latter date, and for the term fixed in the act of 1870, the franchise and privileges granted to the Crescent City Gas-Light Company were confirmed.

By a judgment rendered February 1, 1875, in a suit brought by the Crescent City Gas-Light Company against the New Orleans Gas-Light Company, and which involved their respective rights to manufacture and sell gas in New Orleans, the supreme court of the State held that the former company "has the sole and exclusive privilege to make and sell illuminating gas in the city of New Orleans, for fifty years from 1st April, 1875;" also, that the act of March 1, 1860, extending the charter of the New Orleans Gas-Light Company from April 1, 1875, until April 1, 1895, "is unconstitutional and void," as having a title that did not declare the object of the act. The latter company was also enjoined from conducting business after April 1, 1875, while the other company was confirmed in its exclusive right, after that date, to manufacture and distribute gas in New Orleans. Crescent City Gas-Light Co. *v.* New Orleans Gas-Light Co., 27 La. Ann. 138.

51–5

The bill sets out the foregoing facts, and alleges that during February and March, 1875, the directors of the two companies, by means of conferences with each other and with their respective stockholders, concluded to consolidate the two corporations under the name of the New Orleans Gas-Light Company, which should hold and enjoy the rights, privileges, franchises, and property of each; that they determined the amount of its capital, the number of directors, and the persons to compose a board before an election; that the two boards made an agreement, in writing, to which the owners of all the stock of either company have assented; that there has been no

contestation by any stockholder of either of the two corporations of the consolidation or consolidation agreement; that "there was a formal vote, comprising more than three-fifths of all owners of stock, ratifying and confirming the articles, and the agreement and certificate of consolidation have been filed and recorded in the office of the secretary of state;" that "the corporation thus organized and conducting business, from the 29th of March, 1875, has manufactured and sold gas throughout New Orleans without question or opposition," supplying the city, its officers, the officers of the State, and the public generally, and collecting its monthly bills; that there has been no suit by the State or the city questioning its capacity as a corporation, or its title to all the franchises, privileges, rights, or property in its possession; that its possession of "the sole and exclusive right aforesaid has existed from the agreement of the 29th of March, 1875;" that the State regularly assessed the property of the corporation and its franchise for taxation, and compelled it by suit to pay such taxes on property amounting to $3,750,000, of which the franchise is charged to be worth $1,250,000; and that the city of New Orleans, in like manner, assessed the consolidated company, and required from it the performance of the obligations of its charter in supplying gas throughout the city and on the public streets and in public buildings ever since the before-mentioned consolidation.

51–6 The defendants filed a demurrer and plea to the bill. The case was determined upon the demurrer, which was sustained and the bill dismissed, without any mention being made of the plea.

The circuit court was of opinion that the consolidation was entirely without legal authority, and, consequently, that there is, in law, no such corporation as the one which instituted this suit. Upon that ground alone the bill was dismissed.

The effect of the consolidation of March 29, 1875, is the first question to be considered.

By an act of the General Assembly of Louisiana of December 12, 1874, and entitled "An act to authorize the consolidation of business or manufacturing corporations or companies," it is provided: "That any two business and manufacturing corporations or companies now existing under general or special law, whose objects and business are in general of the same nature, may amalgamate, unite, and consolidate said corporations or companies, and form one consolidated company, holding and enjoying all the rights, privileges, powers, franchises, and property belonging to each, and under such corporate name as they may adopt or agree upon. Such consolidation shall be made by agreement in writing, by or under the authority of the board of directors, and the assent of the owners of at least three-fifths of the capital stock of each of said corporations or companies, and a certificate of the fact of such consolidation, with the name of the consolidated company, shall be filed and recorded in the office of the secretary of state: *Provided*, No such consolida-

tion shall in any manner affect or impair the right of any creditors of either of said companies. In the agreement of consolidation the number of directors of the consolidated company shall be specified, and the capital stock may be any amount agreed upon by the companies or corporations, and set forth in the articles of consolidation."

It will be observed that a consolidated company formed under this act acquires all the rights, privileges, and franchises possessed by its constituent companies.

It is contended—and such was the view taken by the circuit court—that, as the original New Orleans Gas-Light Company had until April 1, 1875, the exclusive right to manufacture and
51-7 distribute gas in New Orleans, and as the like exclusive right of the Crescent City Gas-Light Company did not come into existence until that day, the latter company was not when the act of 1874 was passed an "existing" business or manufacturing corporation entitled to the privilege of consolidating with another company.

In this interpretation of the statute we do not concur. The original and amended charters of the Crescent City Gas-Light Company invested it with powers of an important character capable of being effectively exerted prior to the passage of the general statute of 1874. By the act of April 20, 1870, it was authorized, after its passage, to lay pipes or conduits in any of the streets or alleys of the city of New Orleans. Upon its organization, it was entitled to acquire and hold property for all the objects of its creation, to construct works, purchase machinery, provide materials, and make such preparations as were required to put it in readiness to enjoy the exclusive privilege of supplying the city and its inhabitants with gas on and after April 1, 1875. After its incorporation it could have made contracts, obtained capital, and raised money upon bonds secured by mortgage of its works and property then or thereafter acquired. At the passage of the consolidation act it was entitled to exert the powers given by its charter, except that it could not, before April 1, 1875, encroach upon the exclusive privileges granted to the other company. With the consent of the latter company, it could even prior to that date have manufactured and sold gas to the city and to its inhabitants; for, as declared in the Civil Code of Louisiana, (art. 11) "in all cases in which it is not expressly or impliedly prohibited, they [individuals] can renounce what the law has established in their favor, when the renunciation does not affect the rights of others, and is not contrary to the public good." Without such consent, the Crescent City Gas-Light Company could after its organization have engaged in the manufacture and distribution of gas in those parts or districts of New Orleans not included in the charter of the old company. Pontchartrain R. R. Co. *v.* Lafayette & P. R. R. Co., 10 La. Ann. 742. For these reasons, we are of opinion that, on the passage of the act of 1874, and, within a reasonable interpretation of its language, the Crescent City Gas-Light Company was an "existing" business or manufacturing corpora-

tion, entitled to "amalgamate, unite, and consolidate" with
51–8 any like corporation having objects and business in general of the same nature. In so holding, it is not perceived that violence is done to any considerations of public policy which could be supposed to have prompted the act of 1874, or the legislation relating to the two companies.

These views give effect to the decision of the supreme court of the State in Fee *v.* The New Orleans Gas-Light Company, 35 La. Ann. 413, which was determined after the decree in the circuit court had been passed. One of the questions related to Fee's rights in the consolidated company by virtue of his ownership of stock in the Crescent City Gas-Light Company. The report of that case shows that the articles of consolidation were before the court, and that their legal effect was considered with reference to the provisions of the act of 1874. Mr. Justice Fenner, speaking for the court, said: "On the 29th of March, 1875, the New Orleans Gas-Light Company and the Crescent City Gas-Light Company, two corporations chartered under the laws of this State, amalgamated, united, and consolidated themselves into one consolidated company, in pursuance of the provisions of an act of the General Assembly, No. 157 of 1875, entitled 'An act to authorize the consolidation of business or manufacturing corporations or companies.' * * * All requirements of the act were fully complied with. * * * The articles of consolidation, and the legislative act by the authority of which they were executed, evidently present a case of complete and perfect amalgamation, the effect of which was, under American authorities, to terminate the existence of the original corporations, to create a new corporation, to transmute the members of the former into members of the latter, and to operate a transfer of the property, rights, and liability of each old company to the new one. * * * These authorities, and the reason of the matter, satisfy us that plaintiff can and must look to the defendant company for the satisfaction of whatever rights he had against the Crescent City Gas-Light Company, in the mode and on the terms provided in the articles of consolidation." Again: "The law conferred upon three-fifths of his fellow stockholders the power to effect a consolidation without his consent, and even against his will, and he is bound by that consolidation, and by the legal effects thereof, which we have heretofore stated." If the view taken by the circuit court be correct,
51–9 then the consolidation between these companies could not, as adjudged by the supreme court of Louisiana, have affected Fee's rights, and compelled him to look to the consolidated company for the satisfaction of his claims as a stockholder in the Crescent City Gas-Light Company.

This brings us to the consideration of questions more difficult. It is further contended that the right granted to the Crescent City Gas-Light Company, of manufacturing and distributing illuminating gas, and now enjoyed by the consolidated company, was abrogated to the extent that it was made exclusive by that article of

the constitution of Louisiana of 1879 which, while preserving rights, claims and contracts then existing, provided that "the monopoly features in the charter of any corporation now existing in this State, save such as may be contained in the charter of railroad companies, are hereby abolished;" and, that such article is not in violation of the provision of the Constitution of the United States which forbids a State to pass a law impairing the obligation of contracts.

These propositions have received the careful consideration which their importance demands.

It is true, as suggested in argument, that the manufacture and distribution of illuminating gas, by means of pipes or conduits placed, under legislative authority, in the streets of a town or city, is a business of public character. Under proper management the business contributes very materially to the public convenience, while, in the absence of efficient supervision, it may disturb the comfort and endanger the health and property of the community. It also holds important relations to the public through the facilities furnished, by the lighting of streets with gas, for the detection and prevention of crime. An English historian, contrasting the London of his day with the London of the time when its streets, supplied only with oil lamps, were scenes of nightly robberies, says that "the adventurers in gas-lights did more for the prevention of crime than the government had done since the days of Alfred." Knight, vol. 7, ch. 21; Macaulay, ch. 3.

Municipal corporations constitute a part of the civil government of the State, and their streets are highways which it is the province of the government by appropriate means to render safe. To that end the lighting of streets is a matter of which the public
51-10 may assume control. For these reasons, and the necessity of uniform regulations for the manufacture and distribution of gas for use by the community, we are of opinion that the supplying of it to the city of New Orleans, and to its inhabitants, by the means designated in the legislation of Louisiana, was an object for which the State could rightfully make provision. Authority for the position that the supplying of gas to a city and its people may become a public purpose is found in New Orleans *v.* Clark, 95 U. S. 652. That case involved the liability of a municipal corporation upon coupon bonds issued to a company which had undertaken, for a valuable consideration, to light its streets with gas. Mr. Justice Field, delivering the opinion of the court, said: "A private corporation, as well as individuals, may be employed by a city in the construction of works needed for the health, comfort, and convenience of its citizens; and though such works may be used by the corporation for its own gain, yet, as they advance the public good, the corporation may be properly aided in their construction by the city; and for that purpose its obligations may be issued, unless some constitutional or legislative provision stands in the way." Legislation of that character is not liable to the objection that it is a mere monopoly, preventing citizens from engaging in an ordinary pursuit or business open as of common

right to all, upon terms of equality; for, the right to dig up the streets and other public ways of New Orleans, and place therein pipes and mains for the distribution of gas for public and private use, is a franchise, the privilege of exercising which could only be granted by the State, or by the municipal government of that city acting under legislative authority. Dillon's Munic. Corp., 3d edit. § 691; *State v.* Cincinnati Gas Co., 18 Ohio St. 262. See also Boston *v.* Richardson, 13 Allen, 146.

To the same effect is the decision of the supreme court of Louisiana, in Crescent City Gas-Light Co. *v.* N. O. Gas-Light Co., 27 An. 147, in which it was said: "The right to operate gas-works and to illuminate a city, is not an ancient or usual occupation of citizens generally. No one has a right to dig up the streets, and lay down gas pipes, erect lamp-posts, and carry on the business of lighting the streets and the houses of the city of New Orleans, without special authority from the sovereign. It is a franchise belonging to the State,
51-11 and, in the exercise of the police power, the State could carry on the business itself or select one or several agents to do so."

It will therefore be assumed, in the further consideration of this case, that the charter of the Crescent City Gas-Light Company—to whose rights and franchises the present plaintiff has succeeded—so far as it created a corporation with authority to manufacture gas and to distribute the same by means of pipes, mains, and conduits, laid in the streets and other public ways of New Orleans, constituted, to use the language of this court in the case of the Delaware Railroad tax, 18 Wall. 206, "a contract between the State and its corporators, and within the provision of the Constitution prohibiting legislation impairing the obligation of contracts," and therefore "equally protected from legislative interference, whether the public be interested in the exercise of its franchise, or the charter be granted for the sole benefit of its corporators." See also Greenwood *v.* Freight Co., 105 U. S. 20; New Jersey *v.* Yard, 95 *id.* 113.

But it is earnestly insisted that, since the supplying of New Orleans and its inhabitants with gas has relation to the public comfort, and, in some sense, to the public health and the public safety, and, for that reason, is an object to which the police power extends, it was not competent for one legislature to limit or restrict the power of a subsequent legislature, in respect to those subjects. It is, consequently, claimed that the State may at pleasure recall the grant of exclusive privileges to the plaintiff; and that no agreement by her, upon whatever consideration, in reference to a matter connected in any degree with the public comfort, the public health or the public safety, will constitute a contract the obligation of which is protected against impairment by the National Constitution. And this position is supposed by counsel to be justified by recent adjudications of this court in which the nature and scope of the police power have been considered.

In the Slaughter-house cases, 16 Wall. 62, it was said that the

police power is, from its nature, incapable of any exact definition or limitation; and in Stone *v.* Mississippi, 101 U. S. 818, that it is "easier to determine whether particular cases come within the general scope of the power than to give an abstract definition of the power itself, which will be in all respects accurate." That
51-12 there is a power, sometimes called the police power, which has never been surrendered by the States, in virtue of which they may, within certain limits, control everything within their respective territories, and upon the proper exercise of which, under some circumstances, may depend the public health, the public morals, or the public safety, is conceded in all the cases. Gibbons *v.* Ogden, 9 Wh. 203. In its broadest sense, as sometimes defined, it includes all legislation and almost every function of civil government. Barbier *v.* Connolly, 113 U. S. 31. As thus defined, we may, not improperly, refer to that power the authority of the State to create educational and charitable institutions, and provide for the establishment, maintenance and control of public highways, turnpike roads, canals, wharves, ferries, and telegraph lines, and the draining of swamps. Definitions of the police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the General Government, or rights granted or secured by the supreme law of the land.

Illustrations of interference with the rightful authority of the General Government by State legislation—which was defended upon the ground that it was enacted under the police power—are found in cases where enactments concerning the introduction of foreign paupers, convicts, and diseased persons, were held to be unconstitutional as conflicting, by their necessary operation and effect, with the paramount authority of Congress to regulate commerce with foreign nations, and among the several States. In Henderson, &c., *v.* Mayor of New York, 92 U. S. 263, the court, speaking by Mr. Justice Miller, while declining to decide whether in the absence of congressional action the States can, or how far they may, by appropriate legislation, protect themselves against actual paupers, vagrants, criminals, and diseased persons, arriving from foreign countries, said, that no definition of the police power, and "no urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution." Chy Lung *v.* Freeman, 92 U. S., 276. And in Railroad Co. *v.* Husen, 95 U. S., 474, Mr. Justice Strong, delivering the opinion of the court, said that "the police power of a State cannot obstruct foreign commerce or inter-state commerce
51-13 beyond the necessity for its exercise; and, under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution."

That the police power, according to its largest definition, is restricted in its exercise by the National Constitution, is further shown by those cases in which grants of exclusive privileges respecting public highways and bridges over navigable streams, have been

sustained as contracts the obligations of which are fully protected against impairment by State enactment*s*.

In Bridge Proprietors *v.* The Hoboken Co., 1 Wall. 116, it was decided that a statute of New Jersey empowering certain commissioners to contract for the building of a bridge over the Hackensack river, and providing not only that the "said contract should be valid on the parties contracting as well as on the State of New Jersey," but that it should not be lawful "for any other person or persons whatsoever to erect any other bridge over or across the said river for ninety-nine years," was a contract whose obligation could not be impaired by a law of the State. Mr. Justice Miller, delivering the opinion of the court, after observing that the parties who built the bridge had the positive enactment of the legislature in the very statute which authorized the contract with them, that no other bridge should be built, and that the prohibition against the erection of other bridges was the necessary and only means of securing to them the benefit of their grant, said: "Without this they would not have invested their money in building the bridges, which were then much needed, and which could not have been built without some such security for a permanent and sufficient return for the capital so expended. On the faith of this enactment they invested the money necessary to erect the bridges. These acts and promises, on the one side and the other, are wanting in no element necessary to constitute a contract."

In the Binghamton Bridge, 3 Wall. 51, the question was, whether a charter granted to a company authorizing it to build and maintain a bridge across a river in New York for the accommodation of the public, in consideration for which it was given a right to take certain tolls, and providing that it should be unlawful for anyone to erect a bridge, or establish a ferry, within a distance of
51–14 two miles on that river, either above or below that bridge, constituted a contract within the meaning of the Constitution. Under authority of a subsequent statute, another company erected a bridge across the same river, within a few rods above the old one, to the injury of the business of the latter. The argument was strenuously pressed that, while the legislature could dispose of all matters properly the subject of bargain, it had no authority to dispose of the right of passing a great river for four miles. The court held that the first company's charter was a contract between it and the State, within the protection of the Constitution of the United States, and that the charter to the last company was, therefore, null and void. Mr. Justice Davis, delivering the opinion of the court, said, that, if anything was settled by an unbroken chain of decisions in the Federal courts, it was, that an act of incorporation was a contract between the State and the stockholders, "a departure from which now would involve dangers to society that cannot be for-seen, would shock the sense of justice of the country, unhinge its business interests, and weaken, if not destroy, that respect which has always been felt for the judicial department of the Government." It was also observed, in language applicable to the present case, in some respects: "The

purposes to be attained are generally beyond the ability of individual enterprise, and can only be accomplished through the aid of associated wealth. This will not be risked unless privileges are given and securities furnished in an act of incorporation. The wants of the public are often so imperative that a duty is imposed on the Government to provide for them; and, as experience has proved that a State should not directly attempt to do this, it is necessary to confer on others the faculty of doing what the sovereign power is unwilling to undertake. The legislature, therefore, says to public-spirited citizens: 'If you will embark, with your time, money, and skill, in an enterprise which will accommodate the public necessities, we will grant to you, for a limited period, or in perpetuity, privileges that will justify the expenditure of your money, and the employment of your time and skill.' Such a grant is a contract, with mutual considerations, and justice and good policy alike require that the protection of the law should be assured to it." See also West River Bridge Co. *v.* Dix, 6 How. 531.

51-15 The same principle was declared by the supreme court of Louisiana in Pontchartrain R. R. Co. *v.* Orleans Navigation Co., 15 La. 413, where Chief Justice Martin said: "In the same manner as Congress may reward the discoverer of a new invention or mode of constructing roads, by an exclusive privilege, the legislature may reward those who employ their capital and industry in doubtful enterprises, for the construction of a railway between two points, which may be of great utility to the public, though the success of the enterprise may be precarious." See also Pontchartrain R. R. Co. *v.* N. O. R. Co., 11 An. 253; Pontchartrain R. R. Co. *v.* Lafayette & P. R. R. Co., *ubi supra*. And in Crescent City Gas-Light Co. *v.* N. O. Gas-Light Co., the court said: "As the legislature had the right in 1835 to grant the sole and exclusive privilege to the defendant company to make and vend gas in New Orleans for forty years, the legislature of 1870 had the same power to confer on the plaintiff the same privilege for fifty years from the termination of the grant to defendant. We, therefore, conclude that the grant of the monopoly complained of does not violate the Constitution and is valid."

Numerous other cases could be cited as establishing the doctrine that the State may by contract restrict the exercise of some of its most important powers. We particularly refer to those in which it is held that an exemption from taxation, for a valuable consideration at the time advanced, or for services to be thereafter performed, constitutes a contract within the meaning of the Constitution. Asylum *v.* New Orleans, 105 U. S. 368; Home of the Friendless, 8 Wall. 430; New Jersey *v.* Wilson, 7 Cranch, 166; Bank of Ohio *v.* Knopp, 16 How. 376; Gordon *v.* Appeal Tax Court, 3 How. 133; Wilmington R. R. *v.* Reid, 13 Wall. 266; Humphrey *v.* Pegues, 16 *ib.* 248-9; Farrington *v.* Tennessee, 95 U. S. 689.

If the State can, by contract, restrict the exercise of her power to construct and maintain highways, bridges, and ferries, by granting to a particular corporation the exclusive right to construct and oper-

ate a railroad within certain lines and between given points, or to maintain a bridge or operate a ferry over one of her navigable streams within designated limits; if she may restrict the exercise of the power of taxation, by granting exemption from taxation
51–16 to particular individuals and corporations; it is difficult to perceive upon what ground we can deny her authority—when not forbidden by her own organic law—in consideration of money to be expended and important services to be rendered for the promotion of the public comfort, the public health, or the public safety, to grant a franchise, to be exercised exclusively by those who thus do for the public what the State might undertake to perform either herself or by subordinate municipal agencies.

The former adjudications of this court, upon which counsel mainly rely, do not declare any different doctrine, or justify the conclusion for which the defendant contends.

In Beer Co. *v.* Massachusetts, 97 U. S. 32, one of the questions considered was, whether the charter of a private corporation, authorizing it to engage in the manufacture of malt liquors, and, as incidental thereto, to dispose of the product, constituted a contract protected against subsequent legislation prohibiting the manufacture of liquors within the State. The Beer Company claimed the right, under its charter, to manufacture and sell beer without limit as to time, and without reference to any exigencies in the health or morals of the community requiring such manufacture to cease. It was decided that, while the company acquired by its charter the capacity, as a corporation, to engage in the manufacture of malt liquors, its business was at all times subject to the same governmental control as like business conducted by individuals; and that the legislature could not divest itself of the power, by such appropriate means, applicable alike to corporations and individuals, as its discretion might devise, to protect the lives, health, and property of the people, or to preserve good order and the public morals. The prohibitory enactment of which the Beer Company complained was held to be a mere police regulation which the State could establish even had there been no reservation of authority to amend or repeal its charter.

The case of Fertilizing Co. *v.* Hyde Park, 97 U. S. 663, is much relied on by counsel. But a careful examination will show that it does not militate against the views here expressed. A fertilizing company, having been authorized by its charter to establish and maintain south of a specified line in Cook county, Illinois, chemical and other works for manufacturing and converting animal matter into an agricultural fertilizer and other chemical
51–17 products, claimed that its charter constituted a contract the obligation of which was impaired by an ordinance of the village of Hyde Park, where its works were established, prohibiting under penalties the carrying of offal through its streets from Chicago to the company's place of business. The ordinance was based upon a statute passed after the date of the company's charter, investing

the village authorities with power to define or abate nuisances injurious to the public health, and to regulate, prohibit, or license certain named trades or callings, and "all establishments and places where nauseous, offensive, or unwholesome business was carried on." It appeared in proof that the company's factory was "an unendurable nuisance to the inhabitants for many miles around its location; that the stench was intolerable, producing nausea, discomfort, if not sickness to the people; that it depreciated the value of the property, and was a source of immense annoyance;" and that the transportation of putrid animal matter by the company through the streets of Hyde Park "was offensive in a high degree both to sight and smell." The decision was, that the State, under her power to protect the public health, could abate the nuisance created by the company's business, notwithstanding its works had been established within the general locality designated in its charter; and, consequently, the legislature could, at its discretion, amend the charter of Hyde Park and remove the restriction upon its authority to abate nuisances, or invest it with power to regulate or prohibit business necessarily injurious to the public health.

The same principles underlie the decision in Stone *v.* Mississippi, 101 U. S. 814, in which it was held that any one accepting a grant of a lottery does so "with the implied understanding that the people, in their sovereign capacity and through their properly constituted agencies, may resume it at any time when the public good shall require, whether it be paid for or not," the only right acquired by the grantee being "a suspension of certain governmental rights in his favor, subject to withdrawal at will." The business, for the protection of which the contract clause of the Constitution was invoked, was declared by the court to be a species of gambling, wrong in its influence, and tending to "disturb the checks and bal-
51–18 ances of a well-ordered community." Touching legislation granting the privilege of engaging in business of that character, the Chief Justice, delivering the opinion of the court, said: "No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing, in its nature; they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. For this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power."

We are referred to Butchers' Union Co. *v.* Crescent City Co., 111 U. S. 746, as authority for the proposition that the State is incapable of making a contract protected by the National Constitution, in reference to any matter within the reach of her police power in its broadest sense. But no such principle is there established. In that case the question was whether a grant in 1869 to a private corporation of the exclusive privilege of maintaining a live-stock landing

and slaughter-house, within a certain part of the territory of Louisiana, embracing the city of New Orleans—all slaughtering by others in that city to be done at the establishment erected by that corporation—prevented the State, or the municipal government of the city, acting under her authority, from thereafter opening to general competition the right to maintain slaughter-houses and live-stock landings. The majority of the court, in the Slaughter-house cases, having determined that the grant was merely a police regulation, designed to remove from the thickly populated part of New Orleans "noxious slaughter-houses and large and offensive collections of animals necessarily incident to the slaughtering business of a large city," and that the authority to do that rested upon the same ground as the power to interdict in the midst of dense populations unwholesome trades, operations offensive to the senses, building with combustible materials, and the burial of the dead, it was ruled in the last case that the obligations of a contract could not arise out of such a police regulation. So far from the court saying that the State could not make a valid contract in reference to any matter whatever within the reach of the police power, according to its largest
51–19 definition, its language was: "While we are not prepared to say that the legislature can make valid contracts on no subject embraced in the largest definition of the police power, we think that, in regard to two subjects so embraced, it cannot, by contract, limit the exercise of those powers to the prejudice of the general welfare. They are the *public health* and the *public morals*. The preservation of these is so necessary to the best interests of social organization, that a wise policy forbids the legislative body to divest itself of the power to enact laws for the preservation of health and the repression of crime." In that case, four members of this court, while assenting to the doctrine that the State cannot limit the exercise of its powers to the prejudice of the public health and the public morals, concurred in the judgment upon the general ground, among others, that the act of 1869, giving exclusive privileges to the company, the validity of whose charter, in that respect, was the matter determined in the Slaughter-house cases, was not, in any just or legal sense, an exercise of the police power for the preservation of the public health, but, under the pretence simply of exerting that power, was an invasion of the right of citizens, other than those interested in that particular company, to engage in an ordinary business, open to every one upon terms of perfect equality, although, at all times, it was subject to such regulations in respect of the locality and the mode in which it should be conducted as the State might establish.

The principle upon which the decisions in Beer Co. *v.* Massachusetts, Fertilizing Co. *v.* Hyde Parke, Stone *v.* Mississippi, and Butchers' Union Co. *v.* Crescent City Live-Stock Landing Co., rests, is, that one legislature cannot so limit the discretion of its successors, that they may not enact such laws as are necessary to protect the public health or the public morals. That principle, it may be observed,

was announced with reference to particular kinds of private business which, in whatever manner conducted, were detrimental to the public health or the public morals. It is fairly the result of those cases, that statutory authority, given by the State under her police power, to corporations or individuals to engage in a particular private business attended by such results, while it protects them
51-20 for the time against public prosecution, does not constitute a contract preventing the withdrawal of such authority, or the granting of it to others.

The present case involves no such considerations. For, as we have seen, the manufacture of gas, and its distribution for public and private use by means of pipes laid, under legislative authority, in the streets and ways of a city, is not an ordinary business in which every one may engage, but is a franchise belonging to the Government, to be granted, for the accomplishment of public objects, to whomsoever, and upon what terms, it pleases. It is a business of a public nature, and meets a public necessity for which the State may make provision. It is one which, so far from affecting the public injuriously, has become one of the most important agencies of civilization for the promotion of the public convenience and the public safety.

It is to be presumed that the legislature of Louisiana, when granting the exclusive privileges in question, deemed it unwise to burden the public with the cost of erecting and maintaining gas-works sufficient to meet the necessities of the municipal government and the people of New Orleans, and that the public would be best protected, as well as best served, through a single corporation invested with the power and charged with the duty, of supplying gas of the requisite quality and in such quantity as the public needs demanded. In order to accomplish what, in its judgment, the public welfare required, the legislature deemed it necessary that some inducement be offered to private capitalists to undertake, at their own cost, the work of supplying gas for the city and its people. That inducement was furnished in the grant of an exclusive privilege of manufacturing and distributing gas by means of pipes laid in the streets of New Orleans for a fixed period, during which the company would be protected against competition from corporations or companies engaged in like business. Without that grant it was inevitable either that the cost of supplying the city and its people would have been made, in some form, a charge upon the public, or the public would have been deprived of the security in person, property, and business which comes from well-lighted streets.

It is not our province to declare that the legislature unwisely exercised the discretion with which it was invested. Nor are
51-21 we prepared to hold that the State was incapable—her authority in the premises not being, at the time, limited by her own organic law—of providing for supplying gas to one of her municipalities and its inhabitants, by means of a valid contract with a private corporation of her own creation. We may repeat here what

was said by Chief Justice Taney in Ohio Life Insurance and Trust Co. *v.* Debolt, 16 How. 428, in reference to the authority of a State to limit the exercise of its power of taxation: "But whether such contracts should be made or not is exclusively for the consideration of the State. It is the exercise of an undoubted power of sovereignty which has not been surrendered by the adoption of the Constitution of the United States, and over which this court has no control. For it can never be maintained in any tribunal in this country that the people of a State, in the exercise of the powers of sovereignty, can be restrained within narrower limits than that fixed by the Constitution of the United States, upon the ground that they make contracts ruinous or injurious to themselves. The principle that they are the best judges of what is for their own interest is the foundation of our political institutions. It is equally clear, upon the same principle, that the people of a State may, by the form of government they adopt, confer on their public servants and representatives all the power and rights of sovereignty which they themselves possess; or may restrict them within such limits as they deem best and safest for the public interest." After observing that the power of the State to make contracts may be indiscreetly and, for the public, injuriously exercised, he proceeds: "Yet, if the contract was within the scope of the authority conferred by the constitution of the State, it is like any other contract made by competent authority, binding upon the parties. Nor can the people or their representatives, by any act of theirs afterwards, impair its obligation. When the contract is made the Constitution of the United States acts upon it and declares that it shall not be impaired, and makes it the duty of this court to carry it into execution. That duty must be performed."

With reference to the contract in this case, it may be said that it is not, in any legal sense, to the prejudice of the public health or the public safety. It is none the less a contract because the
51–22 manufacture and distribution of gas, when not subjected to proper supervision, may possibly work injury to the public; for, the grant of exclusive privileges to the plaintiff does not restrict the power of the State, or of the municipal government of New Orleans acting under authority for that purpose, to establish and enforce regulations, not inconsistent with the essential rights granted by plaintiff's charter, necessary for the protection of the public against injury, whether arising from the want of due care in the conduct of its business, or from an improper use of the streets in laying gas-pipes, or from the failure of the grantee to furnish gas of the required quality and amount. The constitutional prohibition upon State laws impairing the obligation of contracts does not restrict the power of the State, to protect the public health, the public morals, or the public safety, as the one or the other may be involved in the execution of such contracts. Rights and privileges arising from contracts with a State are subject to regulations for the protection of the public health, the public morals, and the public safety,

in the same sense, and to the same extent, as are all contracts and all property, whether owned by natural persons or corporations.

Whatever therefore in the manufacture or distribution of gas in the city of New Orleans proves to be injurious to the public health, the public comfort, or the public safety, may, notwithstanding the exclusive grant to plaintiff, be prohibited by legislation, or by municipal ordinance passed under legislative authority. It cannot be said with propriety, that to sustain that grant is to obstruct the State in the exercise of her power to provide for the public protection, health and safety. The article in the State constitution of 1879 in relation to monopolies is not, in any legal sense, an exercise of the police power for the preservation of the public health, or the promotion of the public safety; for, the exclusiveness of a grant has no relation whatever to the public health, or to the public safety. These considerations depend upon the nature of the business or duty to which the grant relates, and not at all upon the inquiry whether a franchise is exercised by one rather than by many. The monopoly clause only evinces a purpose to reverse the policy previously pursued of granting to private corporations franchises accompanied
51-23 by exclusive privileges, as a means of accomplishing public objects. That change of policy, although manifested by constitutional enactment, cannot affect contracts which, when entered into, were within the power of the State to make, and which, consequently, were protected against impairment, in respect of their obligation, by the Constitution of the United States. A State can no more impair the obligation of a contract by her organic law than by legislative enactment; for, her constitution is a law within the meaning of the contract clause of the National Constitution. Railroad Co. *v.* McClure, 10 Wall. 511; Ohio Life Ins. & T. Co. *v.* Debolt, 16 How. 429; Sedgewick's Stat. & Const. Law, 637. And the obligation of her contracts is as fully protected by that instrument against impairment by legislation as are contracts between individuals exclusively. New Jersey *v.* Wilson, 7 Cranch, 164; Providence Bank *v.* Billings, 4 Pet. 514; Green *v.* Biddle, 8 Wheat. 1; Woodruff *v.* Trapnall, 10 How. 190; Wolf *v.* New Orleans, 103 U. S. 358.

If, in the judgment of the State, the public interests will be best subserved by an abandonment of the policy of granting exclusive privileges to corporations, other than railroad companies, in consideration of services to be performed by them for the public, the way is open for the accomplishment of that result, with respect to corporations whose contracts with the State are unaffected by that change in her organic law. The rights and franchises which have become vested upon the faith of such contracts can be taken by the public, upon just compensation to the company, under the State's power of eminent domain. West River Bridge Co. *v.* Dix, *ubi supra*; Richmond, &c., R. R. Co. *v.* Louisa R. R. Co., 13 How., 71, 83; Boston Water Power Co. *v.* Boston & Worc. R. R., 23 Pick. 360, 393; Boston & Lowell R. R. Co. *v.* Salem & Lowell R. R. Co., 2 Gray, 1, 35. In

that way the plighted faith of the public will be kept with those who have made large investments upon the assurance by the State that the contract with them will be performed.

The demurrer to the bill of complaint should have been overruled. Upon its averments the complainant was entitled to a decree perpetually restraining the defendants, and each of them, their servants, agents and employees, from the manufacture and
51–24 distribution of gas in New Orleans, by means of pipes, mains and conduits laid in or along the streets and other public ways and places of that city.

The decree dismissing the bill is reversed, and the cause remanded for further proceedings in conformity with this opinion.

Reversed.

True copy.
Test:

JAMES H. McKENNEY,
Clerk U. S. Supreme Court.

52 *Extract from Minutes of Meeting of Drainage Commission, Offered in Evidence by Plaintiff.*

Filed January 29th, 1900.

Drainage Commission of New Orleans.

Regular meeting April 20th, 1899.

Mr. Spencer read a communication addressed to his firm by Mr. Buck, attorney of the New Orleans Gas Light Company, referring to the controversy pending between the said company and the commission, whereupon:

Mr. Morris offered the following preamble and resolution

Whereas in prosecution of the work contemplated by the commission claims for damages for injuries to property and life, or from other cause, may be made against the commission, and,

Whereas it might be prudent for the commission to set aside certain funds, out of which any judgment which may be obtained may be satisfied, be it

Resolved that there be set aside as a contingent fund, fifty thousand dollars in the present issue of bonds of the drainage commission, which bonds shall be replaced and substituted by an equal amount of any subsequent issue of bonds which may be issued in exchange of the present issue.

Mr. Flower seconding, the preamble and resolution were unanimously adopted.

A true extract from the minutes.

(Signed) A. SCHREIBER, *Secretary.*

(1–16–1901)

Ordinances Numbers 7170, 7350, 8327, 10991, *and* 11480, *Offered in Evidence by Defendant.*

Filed January 29th, 1900.

53 MAYORALTY OF NEW ORLEANS,
CITY HALL, *Feb.* 6, 1893.

No. 7170, council series.

Whereas, the drainage of the city of New Orleans is in an extraordinarily disastrous condition, and

Whereas, there is no uniform or general plan adopted for the drainage of the city, and

Whereas, large sums of money have been spent from time to time without any general system or plan of drainage being adopted, and

Whereas, were a general and comprehensive system adopted, such money as is spent from time to time on drainage could be spent in such manner as to further the completion of a complete system and

Whereas, there is no positive or correct data as to the topography of the city, and

Whereas, it is absolutely necessary, in order to formulate a thorough and comprehensive plan of drainage, for the engineers to have exact, precise and full information relative to the topography of the city, the conditions of the soil as to absorption, and all other data pertinent to the subject,

Be it ordained by the common council of the city of New Orleans, That by and with the approval of the board of liquidation, the sum of seventeen thousand, five hundred dollars ($17,500.00) from that portion of the surplus in the hands of said board, which, by section 10 of article 110 of the Acts of the Legislature of 1890, is dedicated for public improvements, be and is hereby appropriated for the making of a thorough and complete topographical survey of the city of New Orleans and to obtain all the necessary data requisite for the formulating of a complete plan of drainage.

Be it further ordained, etc., That, immediately the formation is obtained, the city engineer will prepare and submit to the
54 council of the city of New Orleans a complete and comprehensive plan with sufficient detail to enable the plan to be thoroughly understood, and in such form as to designate the manner in which the work can be executed by degrees as money may be appropriated from time to time for the purpose of drainage, so that such money as is spent will be towards the ultimate completion of the complete plan.

Be it further ordained etc., That the city engineer in conjunction with the mayor and chairman of the committee on water and drainage, shall have authority to call, if necessary, an advisory board of

expert engineers on drainage for the purpose of confirming by competent authority such plan as may be adopted.

Be it further ordained, etc., That the city engineer shall confer with the mayor as to the expenditures, and will report every two weeks to the council of the city of New Orleans of the progress of the work and expenses of same.

Adopted by the council of the city of New Orleans Jan. 31 1893.

DAN A. ROSE,
Clerk of Council.

Approved Feb'y 6, 1893.

JOHN FITZPATRICK. *Mayor.*

A true copy:

CLARK STEEN,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *March* 30, 1893.

No. 7350, council series.

Be it ordained by the common council of the city of New Orleans, That section 3 of ordinance No. 7170, adopted Feb. 6, 1893, be amended so as to read as follows: "Be it further ordained etc., that the mayor shall appoint three (3) competent engineers to form an advisory board of engineers, for the purpose of approving or disapproving of the plan proposed by the city engineer for the making of a topographical survey of the city of New Orleans and obtaining information necessary for the formulating of a plan of drainage, as also to thoroughly investigate and pass upon such plan of drainage as may be submitted to the city council for approval, the compensation of this board of expert engineers to be paid out of the fund provided for in this ordinance, which compensation is to be fixed by the mayor, the chairman of the water and drainage committee, and the chairman of the finance committee of the city council."

Adopted by the council for the city of New Orleans March 28th 1893.

DAN A. ROSE,
Clerk of Council.

Approved March 30, 1893.

JOHN FITZPATRICK, *Mayor.*

A true copy:

CLARK STEEN,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Nov.* 24, 1893.

No. 8327, council series.

Whereas, this the common council of the city of New Orleans has pledged itself to do all in its power for the effective drainage of the city of New Orleans; and whereas the most available funds for this purpose, in which all, are so greatly interested, are deprived chiefly from the sale of franchises: Be it resolved that the sum of seven hundred thousand ($700,000) dollars derived from the sale of franchises of city railroads acquired by Henry Bier, be and the same is hereby created a sacred fund to be devoted exclusively and solely for drainage purposes. Be it further resolved, that the plans for the preliminary topographical survey, if the hereinafter advisory board should deem the same necessary as well as any plans or survey or plans of drainage offered by civil engineers or other parties, shall be submitted to the advisory board, to be
56 composed of Mr. H. B. Richardson, present chief State engineer, Major B. M. Harrod, Mr. Rudolphe Hering, Mr. R. M. Walmsley, Mr. J. C. Denis and Mr. Edward Fenner, for approval or recommendation by said board to the city council; provided that no plan of drainage shall be finally adopted by the said advisory board, unless it receives the approval of a majority of the aforesaid city council. In case of death of any member of the advisory board herein named the others members shall select another person to act with them Be it further resolved that the clerk of the council is hereby instructed to send a notice to the members of the aforesaid advisory board of the meeting of the committee on drainage, in order that said members may be advised and enabled to be present at said meeting.

Adopted by the council of the city of New Orleans November 21, 1893.

DAN A. ROSE,
Clerk of Council.

Approved March 30th, 1893.

JOHN FITZPATRICK, *Mayor.*

A true copy,

CLARK STEEN,
Secretary to the Mayor

MAYORALTY OF NEW ORLEANS,
CITY HALL, *July* 10, 1895.

No. 10991, council series.

An ordinance adopting a system of drainage for the city of New Orleans.

Whereas, the advisory board on drainage, after a thorough research and exhaustive labors, have formulated a plan of drainage of the entire area of the city of New Orleans for their approval therefore, be it ordained, that the plan of drainage as submitted by the advisory board be and the same is hereby approved and accepted and made the plan of drainage to be put in execution in the
57 city of New Orleans, with this exception, that the Broad Street canal and the provisions made therefor, in making it the main canal for the drainage system, be amended so as to conform to a plan submitted by the city engineer, providing for the covering of same.

Be it further ordained That the plan and system of drainage for the city of New Orleans, as recommended in their report by the advisory board on drainage for the city of New Orleans as amended by plans of the city engineer relative to the covering of the main canal on Broad street, be and the same are hereby approved and ratified by the common council of the city of New Orleans.

Be it further ordained, That the city engineer be and he is hereby directed to prepare detailed plans and specifications for the execution of work as provided in this ordinance.

And the city engineer is hereby authorized to draw for the cost of the preparing of said detail plans and specifications and continuance of said bureau from the funds in the treasury of the city of New Orleans set aside for drainage purposes, and the comptroller be and he is hereby directed to transfer the sum of $5,000 five thousand dollars, from amount set aside for drainage purposes in accordance therewith.

Adopted by the council of the city of New Orleans, July 9, 1895.

DAN A. ROSE,
Clerk of Council.

Approved July 10, 1895.

JOHN FITZPATRICK, *Mayor.*

A true copy:

CLARK STEEN,
Secretery to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Oct.* 23, 1895.

No. 11480, council series.

58 Be it ordained, by the common council of the city of New Orleans, That permission be and is hereby granted to the city engineer to secure the services of Messrs. Rudolph Hering, B. M. Harrod and H. B. Richardson as consulting or advisory engineers on the plans and specifications for the drainage which he is now preparing. Be it further ordained etc., that the remuneration for the services of these engineers be approved by his honor, the mayor, and paid out of the funds set aside for the drainage of the city of New Orleans.

Adopted by the council of the city of New Orleans, October 23rd, 1895.

DAN A. ROSE,
Clerk of Council.

Approved October 23, 1895.

JOHN FITZPATRICK, *Mayor.*

A true copy:
CLARK STEEN,
Secretary to the Mayor.

A true copy
(Signed) C. H. LA VILLEBEUVRE,
Secretary to the Mayor.

59 & 60–60 *Report of the Drainage Commission, Offered in Evidence be Defendant, Marked Defendant "I."*

Filed January 29th, 1901.

Extract of the Proceedings of the City Council of Date January 24th, 1896, Offered in Evidence by Defendant.

Filed Jan. 29th, 1900.

Office of the clerk of council.

CITY HALL, NEW ORLEANS, LA., *January 16th*, 1901.

61 I hereby certify that the following is a true and correct copy of the extracts of the proceedings of the city council of date January 24th, 1896, relative to the adoption of specifications for drainage under ordinance No. 10.991 C. S. reported favorably this date January 24th 1896 by joint committees 2, 8, and 9, with the following amendments.

Amendments.

On page 33 strike out lines 14, 15 and 16 and all after the word "contract" in line 19 up to and including line 20.

On page 37 strike out all after the word "engineer" in line 11, up to and including line 15 and insert the following: In case of any disagreement in regard to price the matter shall be left to arbitration.

On page 70 after line 8: "or such standard as may be adopted."

On page 40 after the word "engineer," in line 10, add: and the commissioner of public works.

A general discussion of the specifications and amendments occurred, participated in by Messrs. Boes, Noel, Dickson, Kane, Louque, Gautier, Mayer, Murray, Desporte and Gately.

Responsibility of Contracts and Sub-contracts.

Mr. Noel then moved to strike out on page 33 lines 14, 15, and 16 and all after the word "contract" in line 19 up to and including line 20, seconded by Mr. Dickson and adopted by *viva voce* majority vote.

Mr. Noel moved to adopt the following:

Extra work.

On page 37 strike out all after the word "engineer," in line 11, up to and including line 15, and insert the following; in case of any disagreement in regard to price, the matter shall be left to arbitration."

The chair called attention to the fact that the amendment was not specific enough, and failed to designate the mode of selection of the arbitrators. This point was then covered by Mr. Noel by this additional amendment: "Such disagreement shall be settled by arbitration as provided for in these specifications" adopted by *viva voce* vote.

62 Mr. Noel moved to adopt the following "On page 70, after line 8, add "Or such standard as made by adopted" This was adopted by *viva voce* vote.

Mr. Noel moved to adopt the following: After the word "engineer" in line 10 add: "and the commissioner of public works."

After discussion of this amendment and its bearing, the chair ruled it was incomplete this was covered by Mr. Noel offering to amend by adding the words "wherever it applies." The amendment, as amended, was then adopted, the clerk instructed to make such change wherever necessary.

Mr. Noel then moved to amend "On page 82 section 2, strike out all after the word "understood."

During a discussion of this amendment the chair suggested that he saw no harm to result from the original clause remaining, as in

his opinion, it would prove a safe guard to the city's interest to know that it was dealing with responsible manufacturers of known merit, etc.

Mr. Noel then explained his reasons for offering an amendment, and it was finally adopted by a majority rising off 19 yeas to 2 nays.

Mr. Noel then offered an amendment on page 33 under the head of sub-contracts, to strike out the following: should any sub-contractor fail to perform the work undertaken by him, in a satisfactory manner, the contractee may end and terminate such sub-contract. Adopted.

Time of completion.

On page 94 under this head, Mr. Murray offered the following amendment: "That the drainage work shall be commenced simultaneously and executed in the various districts as rapidly as circumstances will permit." A discussion of this amendment resulted in its being lost by a vote of five yeas to sixteen nays.

Mr. Kane offered the following amendment "No contract or sub-contract shall be awarded to any but parties who are reputed to be masters of the branch of the work." After discussion this
63 amendment was lost by a majority *viva voce* vote.

Mr. Noel then offered the following amendment; "Insert on last page last clause the following: "Bidders shall also bid a fix-sum for the entire work, as set forth in the specifications besides bidding in the manner described above." Adopted.

Mr. Ga-tier offered the following amendment: "Page 1, etc., proposals for drainage, etc., to amend by striking out, $100,000 and inserting $50,000 for deposit." Adopted.

Mr. Gautier offered the following amendment: "On page 35, etc., contractor's bonds strike out, $500,000. and insert $200,000 for bond. Adopted.

There being no further amendments offered Mr. Gately moved to postpone final consideration for one week. This motion was lost by a *viva voce* vote.

Mr. Kane argued the further delay, and after discussion a final vote was had on the specifications, as amended, and they were finally adopted as amended by a majority of *viva voce* vote.

(Signed) T. W. CAMPBELL,
Clerk of Council.

Continued.

Extract from Minutes of Division "E."

WEDNESDAY, *January 16th*, 1904.

Present: The Hon. Geo. Theard, judge.

This case came on this day for trial.

Present: Chas. F. Buck, Esq., for plaintiff. W. B. Spencer, Esq., for defendant.

And after hearing pleadings and evidence, the court ordered the matter continued by preference for argument.

Note of Evidence for Plaintiff.

Filed January 30th, 1901.

64 By consent in open court before the argument began the following additional note of evidence was made and the evidence received subject to an objection of counsel for defendant on the ground of irrelevancy which the court overruled as going to the effect and bill was reserved, viz:

Counsel for plaintiff offers—

I. Act No. 100 act of 1845 amending charter of New Orleans Gas Light Co.

II. Decision of supreme court of La. Chacity Hospital *vs.* Gas Co. 40 Ann., page 382 to be used and referred to in the official publication.

III. A statement Exhibit "A" annexed and filed showing amount of gas annually furnished free to the charity hospital and at half rate to other charitable institutions and public buildings.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Def't.
BUCK, WALSHE & BUCK.

Statement Exhibit "A."

Filed February 1st, 1901.

A. H. Sieward, pres't; Duncan Jones, sec'y; F. E. Richmond, treas.

Office of N. O. Gas Light Company.

Gas consumed by charity hospital free of charge, delivered in accordance with the obligation fixed in the charter, amount in dollars and costs, if charged at regular rates as follows:

1894	$3721.00
1895	4792.50
1896	5363.00
1897	5394.50
1898	6069.50
1899	6219.50
1900	6921.75
	$38481.75

65 These amount- would be subject to a discount of 35%, if paid within a time limit.

Difference Between Amount Paid for Gas by Charitable Institutions During Year 1900 and Regular Price Charged Consumers.

January	$178.24
February	164.99
March	143.91
April	124.24
May	93.86
June	85.11
July	82.61
August	85.93
September	98.32
October	133.18
November	153.08
December	195.49
	$1,538.96

Agreement Offered in Evidence by Plaintiff.

Filed January 30th, 1900.

Civil Dist. Ct., Div. E.

NEW ORLEANS GAS LIGHT CO. *vs.* DRAINAGE COMMISSION OF N. O. } No. 60609.

It is stipulated and agreed between counsel for plaintiff and defendant.

1. That the following items shall in event of judgment in favor of plaintiff be deducted from the amount awarded it, to-wit

March 31, 1899.	Services engineer & foreman	$75.00
April 30, 1899.	" " "	125.00
May 30, 1899.	" " "	125.00

66 2. And the following items shall be rejected as in case of non-suit, to-wit:

Jan'y 31/99.	Loss of sale of gas on St. Louis St. bet. Romain & Basin Sts. from September 15 1898 to Jan'y 31 1899 4½ mos. at $20	90.00
Feb'y 28/99.	Ditto for month of Feb'y 1899	20.00
March 31/99.	Ditto for month of March '99	20.00
Apr. 30/99.	" " " " " "	20.00
May 30/99.	" " " " " "	20.00

3. In other respects the account of expenses of charges, removals etc., filed with the petition as "Exhibit A" is correct.

(Signed) BUCK, WALSHE & BUCK,
Att'y- for Pl'ff.

" HOWE, SPENCER & COCKE,
Att'ys for Defendant.

Judgment.

NEW ORLEANS GAS LIGHT CO.
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 60609.

This case came on this day for argument.

Present: Chas. F. Buck, Esq., for plaintiff. W. B. Spencer, Esq., for defendant.

And after hearing counsel, the court considering the law and evidence to be in favor of defendant, for the reasons orally assigned:—

It is ordered, adjudged and decreed that there be judgment herein rejecting the plaintiff's demand at its cost.

Judgment rendered in open court January 30th 1901.

Judgment signed in open court February 5th 1901.

(Signed) GEO. H. THEARD, *Judge.*

67

Judgment Signed.

Extract from Minutes of Division "E."

TUESDAY, *February 5th*, 1901.

Present: The Hon. Geo. H. Theard, judge.

N. O. GAS LIGHT CO.
vs.
DRAINAGE COMMISSION OF N. O. } 60609.

The judgment rendered in the above entitled and numbered case on January 30th 1901 was signed this day in open court.

Motion of Appeal.

Filed February 2nd, 1901.

Civil Dist. Court, Div. E.

THE NEW ORLEANS GAS LIGHT CO.
vs.
DRAINAGE COMMISSION OF NEW ORLEANS. } No. 60609.

To the honorable the judges of said court:

On motion of Buck, Walshe & Buck, attorney- for defendant and on suggesting to the court that defendant herein is informed and

believes that there is error to its prejudice in the final judgment herein rendered on the 30 day of Jan'y 1901 and signed on the 5th day of Feb'y 1901, and is desirous of having and prosecuting a suspensive appeal therefrom,—

It is ordered:—That a suspensive appeal be allowed herein to said defendant from said judgment to the honorable the supreme court of the State of Louisiana returnable in said court on the first Monday in March 1901 there not being sufficient time to complete the transcript for the next return day which is the third Monday of the instant month, on appellant giving bond with good and solvent security in the amount of two hundred and fifty dollars the conditions required by law.

Bond of Appeal.

Filed February 12th, 1901.

68 Know all men by these present-, that, we The New Orleans Gas Light Co. as principal and A. H. Sieward as surety are held and firmly bound unto Thomas Connell clerk of the civil district court, for the parish of Orleans, his successors, executors, administrators, and assigns in the sum of two hundred and fifty 00/100 — for the payment whereof we bind ourselves, our heirs, executors, & administrators firmly by these presents.

Sealed with our seal, and dated in the city of New Orleans, on this 12th day of Feb'y *day of February* in the year of our Lord one thousand nine hundred and one.

Whereas, the above bounden N. O. Gas Light Co. has this day filed a motion of appeal from a final judgment rendered against it in the suit of said New Orleans Gas Light Co. *vs.* Drainage Commission of New Orleans.

No. 60,609, of the civil district court for the parish of Orleans on the 30th day — Jan'y 1900 and signed on the 5th day of Feb'y 1901.

Now the condition of the above obligation is such, that the above bound New Orleans Gas Light Co. shall prosecute its appeal and shall satisfy whatever judgment may be rendered against it or the same shall be satisfied by the proceeds of its estate real or personal, if it be cast in the appeal; otherwise that the said A. H. Sieward shall be liable in its place.

(Signed) A. H. SIEWARD, *Pres't.* [SEAL.]
" A. H. SIEWARD. [SEAL.]

Signed, sealed and delivered in the presence of

CHAS. F. BUCK.

69 *Certificate.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, William B. Murphy, deputy clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing seventy five (75) pages do contain a true correct and complete transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein New Orleans Gas Light Company is plaintiff and The Drainage Commission of New Orleans is defendant, instituted in this court and now in the records thereof under the No. 60609 of the docket thereof div'n E., the Honorable Geo. H. Theard, judge. Pamphlet, charter New Orleans Gas Light Co. filed by plaintiff Jan'y 30, 1901, & pamphlet decision U. S. Supreme Court, No. 18, October term, 1885, filed by plaintiff, Jan'y 31, 1901. Pamphlet report on the drainage of the city of New Orleans, filed by defendant Jan'y 29, 1901 and pamphlet specifications for the construction of a system of drainage for the city of New Orleans, La., filed by defendant Jan'y 29, 1901 forwarded as filed.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said court at the city of New Orleans, on this sixth day of March in the year of our Lord, one thousand nine hundred and one (1901) and in the one hundred and twenty fifth year of the Independence of the United States of America.

[SEAL.] W. B. MURPHY, *D'y Clerk.*

70 *Continuance.*

NEW ORLEANS, FRIDAY, *January* 10, 1902.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice Joseph A. Breaux Newton C. Blanchard Frank A. Monroe Olivier O. Provosty associate justices.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

This case was ordered by the court to be continued with preference.

Cause Submitted.

NEW ORLEANS, FRIDAY, *February* 7, 1902.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

This case came on this day to be heard and was argued by Mr. Charles Francis Buck, of counsel for the plaintiff and appellant, and by Mr. William Wirt Howe, of counsel for the defendant and appellee. The court then took the cause under advisement upon the briefs now on file for both parties.

71 *Judgment of the Court.*

NEW ORLEANS, SATURDAY, *June* 21, 1902.

The court was duly opened, pursuant to adjournment.

Present: Their honors, Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

On appeal from the civil district court, parish of Orleans.

The law and the evidence being in favor of plaintiff and against the defendant, the judgment appealed from is annulled, reversed and avoided.

It is further ordered, adjudged and decreed that the plaintiff have judgment against the defendant for the sum of three thousand five hundred and seventy-one and 38/100 dollars ($3,571.38). It is further ordered, adjudged and decreed that the six items dated respectively January 31, 1899, to May 30, 1899, are rejected as per agreement of parties in this case as in case of non-suit. Costs of both courts to be paid by defendant and appellee. (Blanchard and Provosty, JJ., dissent.)

Opinion of the Court.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, SATURDAY, *June* 21*st*, 1902.

The court was duly opened, pursuant to adjournment.

Present: Their honors, Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Pro-

vosty, associate justices. His honor Mr. Justice Breaux, pronounced the opinion and judgment of the court in the following case:—

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SATURDAY, *June* 21*st*, 1902.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

Appeal from the civil district court, parish of Orleans.

(Mr. Justice BREAUX:)

Plaintiff brought this suit to recover for damages to its property by removing its mains and pipes. The legislative act of incorporation of the plaintiff company is dated April 1st, 1835.

The company was authorized to lay pipes and conduits in the public ways and streets, not contrary to public convenience, a right of which it availed itself in due time after its franchise had been granted. Plaintiff has furnished lights to the charity hospital as required by the charter and has complied with other conditions.

The company went into possession of its grant when the limits of the city were much less extensive than they are now and when its population was less than one-fifth of its present number. It has laid mains, pipes, and conduits in pursuance with the charter stipulations.

On the other hand defendant traces its history back to an ordinance of the city council which ordained that initiatives should be taken toward establishing a complete and comprehensive plan of drainage. Surveys were made, plats drawn, and a plan adopted.

To carry out this plan, a city ordinance, in the year 1893, placed aside the sum of seven hundred thousand dollars (the price of city franchises sold) as a sacred fund to be expended exclusively for drainage.

In 1896 (statute 114) a board was organized in accordance with the statute named the "Drainage Commission of New Orleans," whose members were named officials of the city of New Orleans, of the Orleans levee board, and of the board of liquidation of
73 the city debt.

By section 4 of this statute, to the commission was delegated the power to direct and execute, and substantially to carry out the plan of drainage adopted by the city council. They were given the right of expropriating property and to do all needful works of drainage in the streets. This commission claims to have followed a proper plan of drainage under the statutes and ordinances in which they find their power to act and they further claim that their work was properly laid in the different streets. That the different canals were in effect located by the legislature; that it always sought, as much as possible, to minimize all unavoidable interference with the property interests of others.

The defendant further avers in substance that the drainage canals were of reasonable depth and width and were properly located, and that all of its work was a necessary public work. We think the foregoing is a sufficient statement of the case for the decision.

We take it that it devolves upon the courts to interpret the statutes and ordinances so as not to impair the functions and usefulness of the plaintiff corporation under its charter and at the same time that the right of the defendant is to remain as evidently intended by the statute. That each, within the sphere intended, should be left to do the useful work for which it was created. Taking up for decision the points of difference between the two companies, it becomes evident that it grows out of the desire of defendant to appropriate under the exercise of the police power, and of the plaintiffs to recover the expenses of removing and relaying its gas mains and pipes, a work done in order to make room enough for defendant company's drains. In the one case, appropriation, no indemnity is due, and in the other, expropriation (a power the defendant has) the damages are compensable. Decisions are cited by defendants in which the right of appropriation has been recognized, and they say they control the issues in the case before us for decision. These decisions were rendered in cases of appropriation of land on
74 the river front, presenting a different issue.

The lands referred to in Bass *vs.* State, 34 A. 494, and Chaffe *vs.* Trezevant, 38th A. 746, were owned subject to a servitude. This right on the river front is unquestioned. It is of very ancient origin; its date is coeval with government. On this continent, when the territory was ceded to the United States, the servitude on navigable rivers passed to the public. The State has a right "of servitude over the lands on the shores of navigable rivers for making repairs to levees, roads, and other public works. Eldridge *vs.* Trezevant, 160 U. S. 462.

When, therefore, in the cases cited *supra* "appropriation" was resorted to, there was no encroachment upon private property. The defendants in the cases cited above bought the property subject to this right of servitude.

Defendants in the case before us for decision insist that their case is within the law and cite in support of their contention a decision of the Supreme Court of the United States in which they contend the Bass and Chaffe cases received approval. We have not found in this decision the approval as going to the length for which defendants contend. It (the decision cited *infra*) held that the question involved was not a Federal question, and particularly stated that the question was one especially within the sovereign control of the State. The court did not stop with this announcement. It went out of its way to say, that, it is difficult to see how it would be possible to take private property wherever situated and apply it to any public purpose without compensation by terming the action an exercise of the police power and that it would be particularly difficult to see how such a conclusion can be reached by the court of a State in

whose constitution is to be found a provision, that, private property shall not be taken for public use without just and adequate compensation first made. Eldridge *vs.* Trezevant, 160 U. S. 465.

Defendants we imagine find very little support in this decision. The decision evidently looks to compensation as just and not to be overlooked.

75 The franchise granted to the plaintiffs and the right to lay their pipes and mains in the streets was not granted subject to a restriction. It was an unlimited grant (as relates to the police power claimed here) and is different from the servitude which burdens riparian property. But, returning to the question of the police power proper, we must bear in mind that all works of public improvement in which communities are greatly interested do not afford ground to appropriate property under the police power or cause damage without the least concern about indemnity.

True, in the presence of a great calamity, the right arises and the question of the ownership of the property pales into insignificance. The right then is bold and independent but it is to be exercised by the State and not by subordinate agencies to which it has not been delegated expressly.

With reference to a cause of action not entirely similar to the one here (but the principle has application) the Supreme Court of the United States has said "Except in cases where property may be destroyed to avert a conflagration or the ravages of pestilence or be taken under the pressure of an immediate and overwhelming necessity to prevent a public calamity, the power of the State over the property of the citizen does not extend beyond such limits."

In other cases, the owner has an absolute right which he cannot be made to surrender except under the power of eminent domain for works of public utility and for compensation previously made. We have seen that plaintiffs' claim is for the expenses of removing and relaying their mains. Beyond this we do not go, and we are not called on to go further. The right is protected by article 167 of the constitution: "Private property shall not be taken or damaged for public purposes without just and adequate compensation being first made."

We grant that this protection must give way to the *sovereign* authority when it is in the exercise of the police power in great emergencies. Let us assume for the purpose of illustration that, after many years of underground occupancy of a public street, a

76 company is called upon to move and get out of the way by another company. "Do not stand upon the order of your going. Take your pipes and mains with you and pay your own expenses." May it (the company sought to be ejected) not ask the ejector by what authority you propose to impose the expense upon me, and if the answer is the police power, may it not request it to point in the statute to the delegation claimed, and if it be not found, may it not in answer say: "Room shall be given, but you must pay the expense to which I will be put."

Evidently it, the police power, was not delegated either expressly or by intendment, because it was intended to let the defendant exercise the right of eminent domain and pay for expropriated property, or for damages occasioned.

The police power generally resides in the State.

Here the defendant claims a right under the police power. The statute contains no express grant to exercise such a power. Even as to the State it has been decided that over corporations which have continuously complied with their charters, it held only the control which it exercises over the property of individuals engaged in similar businesses. Railroad tax cases, 13 Fed. Rep. 755, and the exercise of the general police power "of a State does not authorize it to damage private property except for purposes before mentioned." Hollingsworth *vs.* Tensas, 17 Fed. Rep. 109.

"Police power can only be exercised by legislative enactment and it rests solely with legislative discretion to determine when public welfare or safety requires its exercise." (We have verified this reference to decisions and found that they support the text.) Eng. and Amer. Enc. of Law, vol. 18, p. 746. "Legislative discretion" has not spoken in this case.

There is ample room for both and under the rule which requires every one to so use his own, and so conduct himself as not to injure his neighbor or impair his rights, we think that the defendant cannot do less than pay the expenses.

The law and the evidence being in favor of plaintiff and against defendant, the judgment appealed from is annulled, reversed
77 and avoided.

It is further ordered, adjudged, and decreed that the plaintiff have judgment against the defendant for the sum of three thousand five hundred and seventy-one and 38/100 dollars ($3571.38)

It is further ordered, adjudged, and decreed that the six items dated respectively January 31, 1899 to May 30, 1899 are rejected as per agreement of parties in this case as in case of non-suit.

Costs of both courts to be paid by defendant and appellee.

Blanchard, J. and Provosty J., dissent.

(*Syllabus.*)

Plaintiff has a grant by the legislature and the privilege of establishing gas works and of supplying the inhabitants with gas light by means of pipes laid in the streets. It has complied with its obligations as grantee.

Another company is without authority to remove its pipes and interfere with its mains without incurring liability for the breakage done and removal of pipes and mains.

The State has delegated the power of eminent domain to the defendant. This implies compensation for expropriation and for damages done. The State has not delegated to the defendant the

right of exercising the police power which implies that dam-
78 ages may be committed without compensation. The exercise of the police power remains in the State unless expressly or impliedly delegated. It was not expressly or impliedly delegated.

If the police power may be exercised to compel one company to remove and relay its pipes and mains without compensation to the owner to make room for another company, it must be exercised by the State.

The claim of plaintiff for expenses of actually removing and relaying its pipes and mains is allowed and judgment is accordingly rendered.

[Endorsed:] 13897. N. O. Gas Light Co.

79 *Petition for Rehearing.*

Supreme Court of Louisiana.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

To the honorable the supreme court of Louisiana:

The petition of The Drainage Commission of New Orleans, appellee in this case respectfully represents:

That there is error to its prejudice in the opinion and decree of the court delivered herein on the 21st of June inst., and it respectfully asks for a rehearing of the cause.

It is submitted that the court has erred in asserting that because the legislature has delegated to the Drainage Commission of New Orleans the power to expropriate property, the commission has no power to "appropriate" under the exercise of the police power. It is elementary that the right of eminent domain is one thing, and the right to exercise the police power is quite another; and no reason is perceived why the recognition of the right of the drainage commission to expropriate could be construed as a denial of the power to appropriate.

It is also submitted that a central error in the opinion of the court is the statement that police power has not been delegated to the Drainage Commission of New Orleans. It is elementary that the whole matter of drainage for the benefit of public health and public convenience belongs to the domain of the police power. (Tiedeman on Police Power, p. 445.) In the case of State *vs.* Flower, 49 An., 1199, your honors construed and justified the establishment ofthe Drainage Commission of New Orleans as a valid exercise of the police power (see p. 1202); and the whole theory of the case as op-
80 posed to the technical points set up on the other side, was that the act No. 114 of 1896 was a delegation of police power on this subject by the State to a subordinate instrumentality,

a political body established by the act. The statute in question constitutes a full delegation of the police power upon the subject to the commission; and in section 4, the legislature even authorizes the commission to make rules and regulations in the form of local ordinances, whose violation makes the offender liable to fine and imprisonment.

It is further submitted that your honors have erred in your appreciation of the doctrine of "appropriation" as established in the decisions with regard to taking lands of riparian owners for levee purposes. If the use of such lands is an exercise of the police power of the State, and is *damnum absque injuria*, because the State has a right of servitude over lands on the shores of navigable rivers for the making and repairing of levees, roads, and other public works, still more has the State, and the drainage commission, to which the State has delegated its police powers in the matter of drainage, a right with respect to the streets of the city of New Orleans. The right is larger and plainer than that affirmed in the levee cases. The streets do not belong to the gas company subject to a servitude on the part of the State, or the city, or the drainage commission to build its works. On the contrary, the streets belong to the public. It has often been decided that the fee of the streets is in the public, or in the city as a trustee for the public, and the right, therefore, of the State, or of a subordinate political body by delegation from the State, to use the streets for the interest of public convenience and public health is greater and clearer than the right to use other people's property for levee purposes. The gas light company is a corporation created for the purpose of making money, just as
81 much as if it had been incorporated to build and operate a cotton mill. It has been allowed to lay its pipes in the streets, but no particular portion of the street has been given to it. In our briefs already on file, this subject has been fully discussed, and it has been demonstrated that the rights of the gas light company in this matter are always subject to the superior right of the State and of the drainage commission by delegation from the State. It is respectfully asked that the court review the numerous decisions cited in the briefs of this petitioner.

The streets of New Orleans belong to the public. The question in the case is one of regulation under a police power that is inalienable, and cannot be bargained away. The right of the gas company to lay its pipes in streets that do not belong to it in any way, or by any title, is not a vested or contractual right as to any special part of the subsoil of the street. So far as the strictly contractual rights of the gas company are concerned, they must be measured by the law in existence in 1835 and 1870. The rule laid down by Mr. Justice Brewer in National Water Works Co. *vs.* City of Kansas, 28 Federal, 921, is the law of this case, and has never been overruled. There has never been any taking of the property of the gas company in the sense of the Constitution, nor any injury done to the gas company in the legal sense. It is a plain case of *damnum absque*

injuria like that of Vidalat against the City of New Orleans, 43 An. 1121, and National Water Works Co. against City of Kansas, above cited.

See also: Bass *vs.* State, 34 An. 494; Peart *vs.* Levee District, 45 An. 421; Eagan *vs.* Hart, 45 An. 1360; Carondelet Canal & Nav. Co. *vs.* New Orleans, 38 An. 308; Ruch *vs.* City of New Orleans, 43 An. 275; Pontchartrain R. R. Co. *vs.* Levee Commissioners, — An. 570; Eldredge *vs.* Trezevant, 160 U. S. 455; Dubose *vs.* Levee Commissioners, 11
82 An. 165; R. R. Co. *vs.* Wakefield, 103 Mass. 261; City of Cincinnati *vs.* Penny, 21 Ohio State, 499; Brown *vs.* Duplessis and City of New Orleans, 14 An. 842; Dillon, Municipal Corporations, secs. 656, 671; Lewis on Eminent Domain, secs. 107, 109.

Petitioner, therefore prays for a rehearing of this cause, and for general relief.

Respectfully submitted,

(Signed) HOWE, SPENCER & COCKE,
Attorneys for Petitioner.

(Endorsed:) No. 13,897. Supreme court of Louisiana. The New Orleans Gas Light Company *versus* The Drainage Commission of New Orleans. Petition for rehearing. Filed June 27, 1902. (Signed) T. McC. Hyman, clerk.

Rehearing Granted.

NEW ORLEANS, MONDAY, *March* 16, 1903.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

By the COURT: It is ordered that the rehearing applied for in this case be granted.

Continuance.

NEW ORLEANS, MONDAY, *April* 27, 1903.

The court was duly opened, pursuant to adjournment.

83 Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

(On rehearing.)

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

This case was ordered by the court to be continued until to-morrow, Tuesday, the 28th day of April instant, 1903.

Continuance.

NEW ORLEANS, TUESDAY, *April* 28, 1903.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

(On rehearing.)

This case came on this day to be heard and was argued by Mr. Charles F. Buck, on behalf of the plaintiff, appellant, until the hour of adjournment, 3 o'clock p. m., when the court ordered the cause to be continued until to-morrow morning, at 11 o'clock, for resumption of argument.

Cause Submitted.

NEW ORLEANS, WEDNESDAY, *April* 29, 1903.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier
84 O. Provosty, associate justices.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

(On rehearing.)

The trial of this cause continued from yesterday, Tuesday, the 28th day of April instant, was this day resumed, and having heard argument from Mr. Walker B. Spencer, of counsel for the defendnt and appellee, and by Mr. Charles F. Buck, of counsel for the plaintiff and appellant, the court took the cause under advisement upon the briefs for both parties and papers now on file.

Motion for Time to File Briefs.

Supreme Court of the State of Louisiana.

NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

On motion of Buck, Walshe & Buck, attorneys for plaintiff and appellant and on suggesting to the court that appellees have filed a full and elaborate brief on the rehearing which they movers believe in the discharge of their duty they should answer:—

It is ordered: That a delay of ten days be granted movers to file briefs herein.

(Endorsed:) No. 13,897. Supreme court of Louisiana. New Orleans Gas Light Company *vs.* The Drainage Commission of New Orleans. Motion and order for enlargement of delay to file brief. Entered and filed May 15th, 1903. (Signed) T. McC. Hyman, clerk.

85

Final Judgment.

NEW ORLEANS, MONDAY, *November* 30, 1903.

The court was duly opened, pursuant to adj-urnment.

Present: Their honors Francis T. Nicholls, chief justice; Joseph A. Breaux, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, associate justices.

On rehearing.

THE NEW ORLEANS GAS LIGHT COMPANY
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

For the reasons herein assigned, it is ordered and decreed that the judgment of this court heretofore rendered in this cause be and it is hereby set aside, and it is now ordered, adjudged and decreed that the judgment of the district court appealed from herein be and the same is hereby affirmed and plaintiff's demand is rejected with costs of both courts.

(Breaux, J., dissents.)

Copy of Opinion.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *November* 30, 1903.

The court was duly opened, pursuant to adj-urnment.

Present: Their honors Francis T. Nicholls, chief justice; Joseph A. Breaux, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, associate justices.

His honor, the chief justice, pronounced the opinion and judgment of the court in the following case:—

86 NEW ORLEANS GAS LIGHT CO.
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS. } No. 13897.

On rehearing.

NICHOLLS, *C. J.*:

In an able brief filed on behalf of the defendant it is forcibly urged 1st—

That the gas Co. had only the right of user in the public streets along with all other citizens and acquired no right of "ownership" or "property" in or to any -art of the public streets by virtue of its charter provisions (2 Dillon Mun. Corp. (3rd ed.) 683).

2nd. That it took this right of user subject to the implied condition that the State or the city might in the exercise of its police power for the public health or the public safety, cause other structures to be placed in or on such street which might temporarily inconvenience the gas Co. in its use or which might occasion the removal to another part of the street of its mains and pipes and that any damage resulting from such temporary inconvenience or such removal was *damnum absque injuria*.

They maintain that the gas Co. was given the exclusive right to sell gas in the city of New Orleans and as a necessary incident to enable them to carry on the business of furnishing the public with gas, it gave it the right to lay its mains and pipes under and through all the streets and alleys of the city and implied a right to maintain the same, provided that such work should be done and maintained with as little inconvenience to the public as possible, but it was not given an exclusive right to the use of the streets, nor a property right in or to any particular portion of the street. The legislature did not designate the particular streets or parts of streets in which the company should

lay its mains and pipes, nor vest the common council or any officer of the city with authority to locate the pipes or regulate the location of the same. The whole subject
87 was left to the judgment and at the risk of the gas Co. with only a warning that they should be laid in such manner as to least inconvenience *to* the public. The gas Co. took the risk of the location of the pipes. If the gas Co. could not acquire any property in the public streets its rights were merely those of user, such a right as any other citizen similarly situated had, or as a street railway had, a right of passage. A- a corollary neither the State nor the city lost the right of control or use of streets for other legitimate purposes and even if the grant of the gas Co. was a public use this did not impair or exhaust the right of the State or the city to make other grants, or to build in such streets other works equally for the public comfort or health. Chicago Railway Co. *vs.* Quincy 27 N. E. Rep. 193 Same *vs.* Same 28 N. E. Rep. 1070 Kansas *vs.* Morley 45 Mo. App. 304.

Counsel urge that the enforced removal of the plaintiff's mains to another part of the street in order to make room for a necessary and important public work was a mere police recognition of its right of user and was in no sense a "taking" or "damaging" of private property or a divesting of a vested right which would entitle it to compensation. Assuming the Co. had a vested right to use some part of the streets did not weaken the position that such vested right could be regulated in a reasonable manner for the public good. It could claim no greater or higher rights than those conferred upon street railway companies by the purchase for a valuable consideration to lay tracks and operate cars upon the streets. Companies of that kind having legislative grants to use the streets can be required by the city in the exercise of its police power for the public safety to erect or maintain gates at their own expense at street crossings and to regulate the speed or length of trains imposing heavy outlays and much inconvenience, though neither the State nor the city could divest them of the right to use the streets without making compensation or make itself liable for damages. The existence of the right of regulation is essential to the
88 welfare of the public and without it the State or city would be powerless to perform its first duty to its citizens of protecting their health, welfare and safety; conditions of life change and what may seem a reasonable and proper use of the streets or what may be ample protection for the health and safety of the citizen in one generation might be utterly unreasonable or inadequate for another. The power to regulate the streets is not only a continuing power but an inalienable one. This being the case all privileges such as the plaintiffs claims must be understood to have been granted and accepted subject to the implied condition that the State or city in the exercise of the police power may regulate, limit or modify that use whenever and wherever the safety health or welfare of the public demand it. The State or city might not be permitted to

completely deny or destroy the right or to so unreasonably regulate it as to amount to a denial or destruction, but such was not the situation at bar. Plaintiff had not been deprived of the right to use a single street where its mains had been laid it had only been required to remove them to one side of the street so as to permit the construction of sewers. The public health required this and the public would have been inconvenienced had they not been changed.

The legislature intended by the provision in the company's charter that it should lay its mains and pipes "in such manner as may procure the least inconvenience to the city or its inhabitants" that the right granted should be subordinate to the paramount right of the public and that the company should at all times yield without compensation to the necessities of the public welfare.

Counsel refer the court to Mugler *vs.* Kansas City 123 U. S. 623 and the authorities therein cited to National Water Works Co. *vs.* Kansas City 28 Fed. Rep. 921. Railroad Co. *vs.* Wakefield 103 Mass. 261. Jamaica Bond Co. *vs.* Brookline 121 Mass. 5. Columbus Gas Co. *vs.* Columbus (supreme court of Ohio) 19 Lawyer Reports Annotated 510. Cincinnati *vs.* Penny. 21 Ohio State 499. Clapp
89 *vs.* City of Spokane 53 Fed. 516. State *vs.* Flower 49 Ann'l. 1199.

In citing the case of Columbus Gas Co. counsel say "That was a suit for damages for expense of relocating gas pipes to conform to a charter in the established grade of a street made by the city of Columbus. The court held that a gas company laying its pipes in the streets of a city under a grant from the city in conformity with an established grade does so subject to the right of the city to change the grade of the street whenever the necessities of the public require it; and in the absence of wantonness or negligence on the part of the city the company can not maintain any action for damages caused by the necessity of taking up and relaying its pipes in order to accommodate them to the new grade.

Referring to Jamaica Bond Co. *vs.* Brookline 121 Mass. 5—they say—"This was an action of damages to recover expense of changing the location of certain water pipes. Plaintiff alleged that it had theretofore laid water pipes on the streets under its charter in accordance with the established grade in the street. That the city had changed the grade and required the plaintiff to change the location of the pipes to plaintiff's great injury and damage. The court held that the injury was *damnun absque injuria*. National Water Works Co. *vs.* Kansas City. 28 Fed. Rep. 921 Mr. Justice Brewer is quoted with the following statement.

This was an action for damages. In 1883 the plaintiff Co. laid a waterpipe in one of the streets of Kansas. The grade of this street had been previously established and the plaintiff had been directed by the city to lay a water pipe therein and the same was laid in the place and manner directed by the city. In 1884 the city dug a sewer on said street on the same part of the street in which the plaintiff's water pipe had been laid in consequence of which the

plaintiffs was compelled to take up and lay its pipe in another place. The action was brought to recover the cost and expense of this relocation. The case is even stronger than the case at bar, in that the city had directed the place and manner in which the
90 plaintiff should lay its main and the water Co. contended that under the circumstances it had acquired such a *vested property right* in an undisturbed *location and position* to entitle it to resist any further trespass of invasion thereof. The answer of the city was that the matter of sewerage was one affecting the public health, that it could not if it would, and that it did not if it could, contract away the right to construct sewers in any part of the public streets; that the plaintiff took its contract to lay its pipes on such public streets subject to the paramount and inalienable right of the city to construct its sewers whenever in its judgment the public interest demanded. The learned justice sustained the city's contention and said "Sewerage is a matter unquestionably affecting largely the public health, and no municipality can make a contract divesting or abridging its full control over such matters * * *. The contract between the plaintiff and the defendant is to be interpreted in the light of this well established rule and so interpreted the plaintiff took its right to lay its pipe in the streets of the city, subject to the paramount and inalienable right of the city to construct sewers therein whenever and wherever, in its judgment the public interests demand. Laying its pipes subject to this right of the city, it has no cause of action if in consequence of this right it is compelled to relay its pipes."

Touching the right of the city to have required a change in the location of pipes even in a case of servitude, defendant calls to our attention article C. C. 703 (699) under the heading "of the right of passage or way" which declares that "when the place for the passage is once fixed, he to whom this servitude has been granted cannot change it, but he who owes this servitude may change it from one place to another in order that it may be less inconvenient to him, provided that it afford the same facility to the proprietor of the servitude."

(See on that subject C. C. 773.)

The plaintiff charged that the defendant acting while
91 engaged in the prosecution of the work of laying a system of drainage through the streets of New Orleans under act No. 114 of 1898 had "encroached and trespassed upon its property" laid in the streets of that city under authority of its charter and franchise from the State of Louisiana. Plaintiff contends that its charter is a contract with the State and that none of the rights and obligations therein granted or created, can be changed, enlarged or taken away, either under the constitution of Louisiana or of the United States except by the power of "eminent domain" and then for proper compensation. Citing Clarksburg Electric Light Co. *vs.* Clarksburg, 50 L. R. A. 142. Indianapolis *vs.* Consumers Gas Co. 140 Ind. 114—27

L. R. A. 514. Chicago Gas Co. *vs.* Lake 30 Ills. 42. Louisville Gas Co. *vs.* Citizens Gas Co.

It does not claim that there was actual physical invasion any taking possession or using by the drainage commission of the mains and pipes. Its argument is that the legislature having granted the right to the gas light Co. to lay its mains on the streets for the purpose of its business anywhere, when this rights has been once exercised it will be presumed the pipes are properly laid and the right becomes a vested and fixed property right, and that right can not be disturbed or injured for another public purpose without compensation, duly made under an express or implied exercise of the power of eminent domain. Citing 6th Avenue railway 72 N. Y. 330.

It contends that the simple fact that the particular public work in aid of whose prosecution its own main and pipes are asked to be shifted to another part of the street may be a work in aid of public health or of the public good, relieves the State or city seeking to construct such work from the obligation of making compensation to it for the loss it has been made to sustain in changing its main to accommodate the work. That while the citizen may be forced on some occasions and under some circumstances to submit to losses and injuries to himself through acts of the Government taken for the public welfare, the mere fact that such was the
92 character of the work does not of necessity carry with it that result. That the facts and circumstances of this case do not *to* make it one where no remuneration for damages can be sustained. Plaintiff contends that the police power properly so called as forcing parties to submit to losses and injury without a claim for compensation is a power of " regulation " by the Government over the use and enjoyment *or* property in the interest of the lines and *limits*, health comfort and quiet of all persons and the protecting of all property within the State. (Thorpe *vs.* Rutland R. R. Co. 27 Vermont 149 Cooleys Constitutional Limitations 3rd. ed. chap. 16, page 572.)

Plaintiff contends that the construction of a system of drainage is not a work of " regulation ; " it is simply the prosecution of a public work for the public good, and while therefore private property of any kind whatever may be taken or damaged, inflicting a particular injury must be compensation as falling under the protection of article 267 of the constitution which declares that " private property shall not be taken or *damaged* for public purposes without just and adequate compensation being first made." That the rule announce in the earlier decisions of courts that acts done in the proper exercise of governmental powers and not directly encroaching upon private property, though their consequence might impair its use, were not a " taking " of property within the constitution- provisions, and did not entitle the owner of such property to compensation from the State or its agents or give him any right of action, were decisions rendered in view of the language of the constitutional restriction in the then existing constitutions that " private property should not be

taken for public use without just compensation being made, and ceased to apply after the lang-age of the constitution was altered so as to declare that "private property shall not be taken or "damaged" for public use without just compensation."

That the former constitutions prohibited the "taking" of private property and under judicial construction compensation was
93 demanded only where there was an actual taking of private property, its physical invasion, but now where the constitution prohibits not only the "taking" of private property but its being "damaged" for public uses, the doctrine had been accepted that a *recovery by the owner might be had in all cases* where private property had sustained a substantial damage by the making and using an improvement that was public in its character; that it no longer required the damage to have been caused by a trespass or an actual physical invasion of the owner's real estate or physical injury to the thing damaged, but recovery might be had if the construction and operation of the railroad or other improvement was the cause of the damage even though the latter was *consequential.*

Plaintiff in support of this proposition quotes the syllabus of Chicago *vs.* Taylor reported in 125 U. S. 161, which declares that under the provisions of the constitution of Illinois adopted in 1870, that "private property shall not be taken or damaged for public use without just compensation" a recovery may be had in all cases where private property has sustained a substantial injury from the making and use of an improvement that is public in its character; whether the damage be direct as when caused by trespass or physical invasion of t-e *the* property or consequential as in a diminution of its market value.

This case which is confidently relied upon by plaintiff originated in the circuit court of the United States for the northern district of Illinois, and resulted in a judgment in favor of the plaintiff. It was taken by writ of error to the Supreme Court of the United States and the judgment below was affirmed. The decision of the circuit court was based upon and followed the decision of the supreme court of Illinois in the case of Chicago *vs.* Western Indiana Railroad *vs.* Ayres (106 Ills. 518) which itself was based upon its own prior decision in Rigny *vs.* City of Chicago (102 Ills. 64). The case of Chicago *vs.* Taylor where the owner of property fronting on Lumber St. with Eighteenth St. as a side street to recover the damages sustained
94 by reason of the construction by the city of Chicago of a viaduct on Eighteenth St. in the immediate vicinity of the lot. The construction was directed by special ordinance of the city council under authority conferred by the charter. The lot had been used for years as a coal yard having sheds, machinery, engines, boilers etc., upon it required for the purposes of that business. The effect of the construction of the viaduct was seriously to affect the market value of the lot for the purposes for which it was specially adapted, or for any other purpose for which it was likely to be used,

by reason of access to it from 18th St. being materially diminished and at some points practically cut off with the further result that the use of Lumber St. as a way of approach to the coal yard by its occupants and buyers, and as a way of exit for teams carrying coal from the yard to the customors, was greatly impaired. There was evidence tending to show that one of the results of the construction of the viaduct and the approaches on either side to the bridge over Chicago river, was that the coal yard was often flooded with water, running on to it from those approaches whereby the use of *a* the premises as a place for handling and storing coal was greatly interfered with and often became wholly impracticable. On behalf of the city there was evidence tending to show that the plaintiff did not sustain any real damage and that the inconveniences resulting from the construction and maintenance of the viaduct were common to all other persons in the vicinity and could not be the basis for an individual claim for damages. There was a verdict and judgment against the city. The particular judgment rendered is not found in the report of the case but it was evidently for an amount equal to the reduction in the market value of the lot by reason of the construction of the work.

The city contended that if it was liable at all it was only liable for such damage as was done to the market value of the property by rendering access to it difficult or inconvenient. The court
95 below charged that the real question was—had the value of this property to sell or rent been diminished by the construction of the viaduct. It might be that it could no longer be used for the purposes of a coal yard or for any other purpose for which it had been theretofore used, but that would not be material if it could be rented or sold at as good a price for other purposes, except that if the proof satisfied the jury that any of the permanent improvements put on the lot for any particular business which had been before carried on there, and for which it had been improved, had been impaired and the bridge was raised as before, and the jury could from the proof determine how much these improvements were damaged, the plaintiff would be entitled to recover for such damage to the improvements—that is to say the lot being improved for a specific purpose if the proof satisfied the jury that it could no longer be rented or used for that purpose and that thereby these improvements had been lost or impaired in value; then the impairment of value to these improvements was one of the elements of damage which the plaintiff was entitled to have considered and passed upon and included in his damage."

The court below charged that the flooding of the lot by water running down upon it from the approaches to the viaduct was an element of damage which the jury might consider though if such flooding merely caused inconvenience to the occupant in the conduct of his business—such as his coal getting wet or its becomig more difficult to keep his scales properly adjusted, these were not elements of impairment to the value of the property for purposes of sale.

That although the occupant might have found it difficult to haul coal out of his yard and although it might have been much more unprofitable to conduct the business of selling coal at this lot—that did not weigh upon the question as to the value of the lot.

Opinion.

The New Orleans Gas Light Co. was created by act of April 1st, 1835. By the charter it was authorized to lay pipes and
96 *and* conduits at its own expense in any of the public ways or streets of those localities, having due regard to the public convenience."

By amendments its rights were continued to be enjoyed until 1 April 1895 when its corporate privileges were to expire. By act No. 97 of 1870 (extra session) another company under the name of the Crescent City Gas Light Co. was incorporated which was authorized to lay pipes or conduits at the expense of the company in any of the streets or alleys of the city of New Orleans where the same may be required, in such manner as may produce the least inconvenience to the city or its inhabitants and provided also that the company shall afterwards repair with the least practicable delay the streets they have broken."

The two companies were subsequently consolidated under the provisions of art 157 of 1874. At the period of the passage of these acts and the creation of the corporations the constitutional provisions that private property shall not be damaged for public purposes without just compensation was not in force. The rights and obligations of the parties were given and accepted under the provisions of the laws and the constitution as then *existing*. (Hire *vs.* R. R. Co. 38 Annl. 607).

The case is presented by the plaintiff as if the State the common author of rights and privileges granted to two distinct corporations had secured and granted to the corporations rights, which trenches upon, modified and impaired those accorded to the first, but this is not the case. The Drainage Commission, the defendant in this case does not occupy the position of a second quasi public corporation. It is simply the State itself acting through it on its own behalf and in the general public interest. What the State did was not to grant a concession to a third person but to resume control for itself of that which it had permitted the plaintiff company conditionally and contingently and temporarily to occupy. The State in requiring the plaintiff company to shift the position of its mains to a different part of the street so as to permit the construction on public
97 property of a work of undoubted utility for the public health has simply exercised what it had reserved the right to do, or rather in simply enforced in its own favor against the plaintiff, one of the conditions upon which the right of the use of the streets had been granted to it, a condition subject to the exercise of which it

had accepted the rights and privileges granted to it. A contingency which was contemplated as possible having arisen the plaintiff has no legal ground of complaint. It is not claimed that the mains or pipes of the plaintiff have been injured by being removed to another part of the street, nor that any part of its work or materials have been or will be utilized by the State or city for its own purposes, nor even that the value of the franchise for purposes of sale or rent which was the only damage recognized by the supreme court in the case of Chicago *vs.* Taylor, has been lessened or impaired. The only matter in contest is the sum of money expended by the plaintiff in making the required change of position of the pipes. The franchise itself remains in full force and effect. If this change had been required to have been made in 1878 (before the constitution of 1879) we scarcely think that plaintiff would have raised the issue which it does not or questioned the *absolute right* of the State to have required it to move its pipes and to yield without claim to reimbursement to the public needs. The rights of the State were read into the charter of the company and they fixed the very tenure by which plaintiff acquired its privileges.

The change made in the constitution of 1879 did not alter the tenure by which plaintiff was to occupy the public streets Plaintiff's original obligation- in this respect remained as they had been undertaken at the beginning.

The view which we take of the situation of the parties renders unnecessary any general discussion of the subject matter of the police power of the State or of the right of eminent domain, and of the right of private individuals or corporations to remuneration for their property taken or damaged for the public use.

98

We think it not amiss to say that we do not think that the plaintiff's right can be reasoned out from the standpoint which it would have occupied had the mains and pipes whose position was required to be changed, been laid not on or under the public streets of a city, but on or under property owned by *itself* in *fee simple.* The situation of the plaintiffs in the two cases would have been materially different. Plaintiff says " it is simply hair splitting to argue the question whether or not the gas light Co. has a property right on any of the streets of New Orleans. There is no such contention in this case. The contention is that there is a *property right in the privilege to lay its mains* and in the mains, when so laid in connection with the public purpose for which the franchises of incorporation and the franchises or right to enter upon the streets for the purpose was granted. It is not contended that by reason of the grant to the plaintiff the State or city lost the right of control or use of the streets for other legitimate purposes; it is contended that the plaintiff has a specific and special right which it exercises under special and exclusive grant from the sovereign which being exercised by the grantee reduced to possession and in connection with the purpose for which it was granted by common consent and judicial and legislative authority, constitutes property protected by

constitutional provisions which may be the subject of mortgage, of lease or of sale and if taxed by the governmental authorities as such.

We can not recognize that plaintiff had or has any *vested right* in the premises to occupy any particular part of the public streets. If its right in the premises could be designated as a property right it was *ab initio* not a perfect but an "imperfect" right, contingent and conditional in its nature and character, held subject to the paramount right of the State over the right and controlled by law and regulation of the police authorities. (C. C.) Its right does not rise to the dignity of a servitude established in its favor by a con-
99 tract, it is at best a license subject to modifications as the pubic necessities or convenience might require. McCormick *vs.* Louisiana & N. W. R. R. Co. 109 La. 767.)

We are not called on to decide whether the situation was such as to require absolutely that plaintiff should have altered the position of its mains so as to permit the construction of the drainage canals. That issue is — in this case.

We are of the opinion that the judgment heretofore rendered in the present case is erroneous and that it should *se* set aside.

For the reasons herein assigned it is ordered and decreed that the judgment of this court heretofore rendered in this cause be and it is hereby set aside and it is now ordered, adjudged and decreed that the judgment of the district court appealed from herein be and the same is hereby affirmed and plaintiff's demand is rejected with costs of both courts.

Breaue, *J.* dissents.

100 (*Syllabus.*)

1. The plaintiff company was authorized by an act of the General Assembly prior to the constitution of 1879 to lay pipes and conduits on any of the public ways, alleys and streets of New Orleans where same might be required in such manner as might produce the least inconvenience to the city or its inhabitants. It must be held to have accepted this privilege subject to the paramount and inalienable right of the State to construct or authorize to be constructed by the city sewers or drainage canals under the streets whenever, in its judgment the public interests demanded and in aid of the construction of such sewers to cause the plaintiff company, at its own expense to change the location of its own mains. The State in requiring the shifting of the position of the mains simply enforced in its own favor one of its reserved rights.

2. The rights and obligations of parties are to be tested by the provisions of the constitution of 1879.

3. The plaintiff had no vested right to occupy any particular position in the streets, such right as it had was *ab initio*, not an

absolute but an imperfect right contingent and conditional in its nature controlled by law and the regulation of the police authorities.

4. The only damage claimed in this action is the sum of money expended by the plaintiff in changing the position of its mains. It is not asserted that the pipes of the plaintiff have been injured by removal nor that any of its work or material have been or will be utilized by the State or city for their own purposes, that the value of the franchise has been lessened or that there has been any physical "taking" of its property.

The demand of the plaintiff falls under the rule of *damnum absques injuria.*

101 *Motion and Order to Make Parties.*

Supreme Court of the State of Louisiana.

NEW ORLEANS GAS LIGHT CO. *vs.* THE DRAINAGE COMMISSION. } No. 13897.

On motion of Buck, Walsh & Buck, attorneys for plaintiff herein and on suggesting to the court that this case is appealable to the honorable the Supreme Court of the United States by writ of error and that petitioner intends to apply to the honorable Chief Justice by petition for such writ of error to transfer the case to the Supreme Court of the United States;—that pending this litigation the defendant, The Drainage Commission of New Orleans, created as in the original petition in this suit set forth by act No. 114 of the acts of 1896, approved July 9th, 1896, and acts amendatory thereof, was by provisions of sec. 8 of act No. 111 of the acts of the legislature of 1902, approved on July 8th, 1902, merged with and in the corporation known and existing under the name of the "sewerage and water board," and by said same section of said act No. 111, acts of 1902,—all of the rights, duties and obligations of the then existing Drainage Commission, original defendant herein, was expressly transferred to, vested in, imposed on, and lodged in the said sewerage and water board, a public corporation existing under the laws of the State of Louisiana as aforesaid; that therefore the said sewerage and water board is a necessary party herein and should be made the party defendant instead of said extinct "Drainage Commission" and served with writ of error herein and cited to answer same according to law, said sewerage and water board being to all intents and purposes by effect of said legislation made the successor of the said Drainage Commission, original defendant,—

Therefore, be it ordered by this court, that the Sewerage and
102 Water Board, a corporation created under the law of Louisiana, successor of the Drainage Commission, under section 8, act No. 111 of the acts of the session of the legislature of 1902 be

made a party defendant herein, contradictorily with whom all further proceedings herein shall be had without prejudice.

And it is further ordered; that copy hereof be served on the sewerage and water board through its proper officer the president.

Without admitting that plaintiff in the foregoing motion is entitled to a writ of error to the honorable the Supreme Court of the United States, and without in any manner consenting to the granting of such writ, the Sewerage and Water Board of New Orleans admits that the allegations in the foregoing motion are true, has no objection to be made a party defendant herein and takes notice of said motion and waives service of copy thereof.

New Orleans December 12, 1903.

(Signed) OMER VILLERÉ,
Special Counsel for Sewerage and Water Board.

(Endorsed:) No. 13897. Supreme court of State of Louisiana. The New Orleans Gas Light Co. *vs.* The Drainage Commission. The "Sewerage and Water Board." Successor substituted. Motion to make Sewerage and Water Board party defendant, without prejudice. Entered & filed December 14, 1903. (Signed) T. McC. Hyman, clerk.

Petition for Writ of Error.

Supreme Court of the State of Louisiana.

NEW ORLEANS GASLIGHT COMPANY
vs.
THE DRAINAGE COMMISSION. } No. 13897.

To the honorable the chief justice of the supreme court of the State of Louisiana:

103 The petition of The New Orleans Gaslight Co., plaintiff and appellant in the above entitled and numbered cause respectfully represents:

That on the 30th day of November, 1903 this honorable court rendered a decree and entered a judgment in this cause in favor of the defendant and against your petitioner, which judgment being rendered after and upon the pendency of an application for rehearing from the original decree became final in this court on the day of its rendition, said 30th of November, 1903.

That in the said judgment and decree and in the proceedings prior thereto certain errors were committed to the prejudice of your petitioner as in this petition set forth and more fully detailed in the assignment of errors annexed hereto and filed as part of this petition.

That in this case petitioner has claimed rights and privileges and immunities arising under the Constitution of the United States, and

that the decree and judgment of this honorable court is adverse to the same.

I. That there was drawn in question in this cause the effect and validity of certain legislative enactments set forth in the pleadings herein in so far as said enactments conferred or pretended to confer authority on the defendant herein to remove the gas mains and pipes laid in the public streets under its grant from the State in the original charters and acts conferring franchises, etc., the plaintiff contending and claiming that the authority or pretended authority so conferred and the exercise thereof by the defendant impairs obligations of the contract as embodied in the legislative enactments constituting the charter and embodying the franchises of the plaintiff herein, in violation of paragraph 1, section 10 of the Constitution of the United States, and the decision of this honorable
104 court is adverse to this claim.

II. That it being remembered that the actual removal of mains and pipes done by the plaintiff was so done under protest and under a special agreement that all legal and constitutional rights were reserved,—the case must be dealt with as if the defendant had on its own motion violently and without previous compensation entered upon the property of the plaintiff and removed same causing damage, and accordingly petitioner contends and contended that such removal is a taking and damaging of property by the State through her subordinate agents, the defendant herein, for a public purpose without compensation previously made and without due process of law and in violation of petitioner's contract and property rights as above set forth, and the decision of this honorable court is adverse to this claim.

III. That whatever the effect and intent of the legislative enactments under which the defendant justifies its interference with and the taking and damaging of the property of the plaintiff the effect of the decree and judgment herein rendered by its interpretation of the said enactment, is to impair the rights and privileges of the plaintiff corporation in violation of section 10 paragraph 1 of the Constitution of the United States; and

IV. In this sense the further effect of the decree and judgment of this honorable court authorizing as it does such "taking and damaging" under an alleged exercise of the police power or power of regulation for a public purpose without compensation operates a taking of property without due process of law and a denial to petitioner of the equal protection of the law in violation of the provisions of the fourteenth (14th) amendment of the Constitution of the United States.

That your petitioner desires and is entitled to have a writ of error under said decree and judgment of this honorable court to
105 the Supreme Court of the United States.

Petitioner shows that under an order this day rendered in open court the Sewerage and Water Board a public corporation, made by law the successor of the Drainage Commission has been substituted

as party defendant in this cause contradictorily with whom all further proceedings herein should be had and conducted.

Wherefore petitioner prays that a writ of error may issue in its behalf to the honorable the supreme court of the State of Louisiana wherein is lodged the record in this cause, that a transcript of said record and papers in the cause, duly authenticated, may be sent to the Supreme Court of the United States returnable therein according to law.

And petitioner will ever pray etc.

(Signed) BUCK, WALSHE & BUCK, *Att'ys.*

Order.

Let a writ of error be granted herein to the honorable the supreme court of the State of Louisiana upon appellant furnishing bond with good and solvent security conditioned according to law in the sum of one thousand dollars; and let the Sewerage and Water Board, successor to the Drainage Commission be cited as defendant in error according to law.

New Orleans, Dec. 14th, 1903.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of Louisiana.

(Endorsed:) No. 13,897. Supreme court, State of Louisiana. The New Orleans Gas Light Company *vs.* The Drainage Commission. The Sewerage and Water Board successor substituted as defendant. Petition for writ of error. Filed December 14th 1903. (Signed) T. McC. Hyman, clerk.

106 *Assignment of Errors.*

Supreme Court of the State of Louisiana.

NEW ORLEANS GASLIGHT CO.
vs.
THE DRAINAGE COMMISSION. } No. 13897.

Assignment of errors.

The above plaintiff, and plaintiff in error in connection with the petition for writ of error, makes the following assignment of error-, which it avers are to be found in the opinion, judgment and decree of this honorable court:—

I. That the supreme court of the State of Louisiana erred in failing to hold and decide that the pipes and mains for delivery of gas to consumers are duly and legally laid under and in the "streets and alleys" of the city of New Orleans, under express authority and

permission of legislative grant embodied in the act of incorporation, were constituted a fixed and integral part of the necessary works, plants and machinery of the corporation plaintiff and were in their location and fixture vested rights and property under the charter which constituted a contract between it and the State of Louisiana, protected from impairment by the provisions of section 10, paragraph 1 of the Constitution of the United States:—

II. That the court erred in holding that the violent or forced removal of pipes and the necessary and consequent relaying of same at great expenses, to supply gas to the public which the plaintiff company is bound to furnish on penalty of forfeiture of charter is not a "taking and damaging of property."

III. That the honorable the supreme court of the State erred in holding that the State in the exercise of police power or reserved power of regulation directly or through the agency of a subordinate public corporation could take, damage or interfere
107 with and affect the property of the plaintiff corporation, injuriously without violating constitutional principles, or taking property without due process of law, or denying to plaintiff the equal privilege and protection of the law.

IV. That the honorable the supreme court of the State of Louisiana erred in failing and refusing to hold as claimed and contended for by plaintiff that the right of plaintiff in and to "its mains and pipes" as laid in the streets, and to the undisturbed use and possession thereof as laid in accordance with the grant from the State was an absolute, indefeasible vested right constituting property of value which could not be appropriated, taken or damaged for a public purpose by the State—even under pretense of regulation or exercise of police power except after legal expropriation in the exercise of the State's power of "eminent domain"—for compensation previously made:—

And petitioner prays that the judgment and decree aforesaid, by reason of the errors therein committed as above set forth, may be annulled and set aside and petitioner have the relief originally prayed for.

And as in duty bound petitioner will ever pray, etc.

(Signed) BUCK, WALSHE & BUCK,
Att'ys for Pl'ff in Error.

(Endorsed:) No. 13,897. Supreme court, State of Louisiana. The New Orleans Gas Light Company *vs.* The Drainage Commission. The Sewerage and Water Board successor substituted. Assignment of errors. Filed December 14th, 1903. (Signed) T. McC. Hyman, clerk.

108 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The New Orleans Gas Light Company, plaintiff, and The Drainage Commission defendant, The Sewerage and Water Board, successor, defendant, No. 13,897, of the docket of said supreme court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The New Orleans Gas Light Company, plaintiff as by its complaint appears. We being willing that error, if any hath been, should be duly
109 corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the fourteenth day of December, in the year of our Lord one thousand nine hundred and three.

[SEAL.] (Signed) H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

(Endorsed:) No. 13,897. The New Orleans Gas Light Co. *vs.* The Drainage Commission. The Sewerage and Water board successor, etc. Copy of a writ of error lodged in the clerk's office of the supreme court of State of Louisiana, in pursuance to the statute in such cases made and provided, this 14 day of December, one thousand nine hundred and three. Filed Dec'r 14, 1903. (Signed) T. McC. Hyman, clerk.

Bond for Writ of Error.

Know all men by these presents, that we, The New Orleans Gas Light Company as principal A. H. Sieward, resident in this city as surety are held and firmly bound unto, The Sewerage and
110 Water Board defendant herein as successor, by operation of special laws to The Drainage Commission, original defendant in the full and just sum of one thousand dollars, to be paid to the said Sewerage and Water Board its certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this fourteenth day of December in the year of our Lord one thousand nine hundred and three (1903).

Whereas, lately in the supreme court of the State of Louisiana holding session in and for the State of Louisiana at New Orleans Louisiana, in a suit depending in said supreme court, wherein The New Orleans Gas Light Co., is plaintiff and The Sewerage and Water Board as successor to the Drainage Commission defendant judgment was rendered against the plaintiff, The New Orleans Gas Light Co., dismissing its suit and the said plaintiff having obtained a writ or error, and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said Sewerage Board successor to said Drainage Commission citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington, the second Monday of October next.

Now the condition of the above obligation is such, that if the said The New Orleans Gas Light Co., shall prosecute its writ to effect, and answer all damages and cost if it fail to make its plea good then the above obligation to be void else to remain in full — and virtue.

NEW ORLEANS GAS LIGHT CO.

(Signed) A. H. SIEWARD, *Pres't.* [L. S.]
(Signed) A. H. SIEWARD, *As Surety.* [L. S.]

Sealed and delivered in the presence of
(Signed) CHARLES F. BUCK.
(Signed) GEO. C. WALSHE.

111 Approved.
(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } ss:

Personally appeared, A. H. Sieward who being duly sworn deposes and says that he is the surety on the within bond, that he resides in the city of New Orleans. State of Louisiana and is worth the full sum of one thousand dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) A. H. SIEWARD.

Subscribed and sworn before me this 15th day of December 1903.

[SEAL.] (Signed) GEO. C. WALSHE, *Not. Pub.*

(Endorsed:) No. 13,897. Supreme court, State of Louisiana. The New Orleans Gas Light Co. *vs.* The Drainage Commission. The Sewerage and Water Board successor. Bond for writ of error. Filed 14, Dec'r 1903. (Signed) T. McC. Hyman, clerk.

Agreement as to Transcript for Writ of Error.

Supreme Court, State of Louisiana.

THE NEW ORLEANS GASLIGHT CO.
vs.
THE DRAINAGE COMMISSION, THE SEWERAGE & WATER Board, Successor. } No. 13897.

It is agreed between the undersigned, counsel for plaintiff and defendant in error, that in preparing the transcript for the Supreme Court of the United States, the pamphlets A and B offered in evidence by the plaintiff, pamphlet A containing various acts of the legislature constituting in part the charter and history of organization of the plaintiff company, and the pamphlet B, being
112 copy of the decision of the Supreme Court of the United States in the case of New Orleans Gaslight Co. *vs.* The Louisiana Light and Heat Producing Co., reported in 115 U. S. at page 650, be not copied into the transcript, and may be supplied and used in the Supreme Court of the United States in the same form or referred to in the official publications.

It is also agreed that the document — a large printed copy of drainage work specifications offered in evidence by counsel for defendant in error be not copied into the transcript but may be attached thereto in the original and sent up with the transcript.

It is further agreed, that the above documents need not be printed

in the printed record of the Supreme Court unless it is absolutely necessary to do so under the rule of that court.

(Signed) BUCK, WALSHE & BUCK,
For Plaintiff in Error.

(Signed) OMER VILLERÉ,
For Defendant in Error.

(Endorsed:) No. 13,897. Supreme court of Louisiana. The New Orleans Gas Light Company *vs.* The Drainage Commission. The Sewerage and Water Board successor, substituted. Agreement as to transcript for writ of error. Filed Dec'r 22nd, 1903. (Signed) T. McC. Hyman, clerk.

113 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The New Orleans Gas Light Co., plaintiff and The Drainage Commission defendant The Sewerage & Water Board successor defendant No. 13897 of the docket of said supreme court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and
113½ the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The New Orleans Gas Light Co., plaintiff as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may

cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the fourteenth day of December, in the year of our Lord one thousand nine hundred and three.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by

FRANCIS T. NICHOLLS,
Chief Justice.

[Endorsed:] No. 13897 The New Orleans Gas Light Co. *vs.* versus The Drainage Commission The Sewerage & Water Board successor. Writ of error. Filed 14 Dec'r 1903 T. McC. Hyman clerk.

114 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the Sewerage Water Board, New Orleans, La., successor of the Drainage Commission, through its proper officer, the president, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana at New Orleans, No. 13897 of the docket of said supreme court,—wherein The New Orleans Gas Light Co. is plaintiff and The Sewerage Water Board as successor to The Drainage Commission is defendant to show cause, if any there be, why the judgment rendered against the said New Orleans Gas Light Co. as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15 day of December in the year of our Lord one thousand nine hundred & three—1903.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

114½ [Endorsed:] Mayor only 12/19/03 at 10.05 a. m. L. Supreme court of the State of Louisiana. No. 13,897 R. The New Orleans Gas Light Company *vs.* The Drainage Commission The Sewerage & Water Board successor, substituted Citation. Filed Dec'r 22, 1903 T. McC. Hyman clerk.

Sheriff's Return.

Received Friday Dec. 18 1903 and on the 19th day of December 1903 at 10.05 a. m. I served a copy of the within citation on The Drainage Commission, The Sewerage and Water Board, successor substituted defendant herein by personal service on Paul Capdivielle, mayor of the city of New Orleans its president

Returned same day

PETER LAMBERT,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Peter Lambert, deputy civil sheriff for the parish of Orleans, State of Louisiana being sworn deposeth and says that he made a personal service of a copy of the within citation on the Honorable Paul Capdevielle, mayor of the city of New Orleans president of the defendant company in this suit.

PETER LAMBERT,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Sworn to & subscribed before me, at the city of New Orleans, this 22d day of December, A. D. 1903.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN,
Clerk of Supreme Court of Louisiana.

115 *Clerk's Certificate.*

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing one hundred and fourteen (114) pages cotain a full, true and complete transcript, (except the report of the drainage commission, offered in evidence by defendant, marked "1" filed January 29th, 1901, mentioned at page 59, and in the particulars specified in the agreement between counsel at page 111 of this transcript), of the proceedings had in the civil district court of the parish of Orleans, in a certain suit wherein The New Orleans Gas Light Company was plaintiff, and The Drainage Commission of New Orleans, The Sewerage & Water Board, successor substituted, was defendant, and, also, of all the proceedings had in this honorable court on the appeal taken by said plaintiff, which appeal is now on the files thereof under No. 13,897.

Seal Supreme Court of the State of Louisiana.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at the city of New Orleans, this seventh day of January, *anno Domini*, one thousand nine hundred and four, and in the one hundred, and twenty-eighth year of the Independence of the United States of America.

T. McC. HYMAN, *Clerk.*

There was no report of the drainage commission offered in evidence. The document called "specifications" the original of which is in the transcript is meant by the word report. The transcript is complete and so accepted by all parties to the record.

OMER VILLERÉ,
Att'y for S. & W. Board, Defendant.
BUCK, WALSHE & BUCK,
By CHARLES F. BUCK,
Att'ys for Pl'ff in Error.

116 *Chief Justice's Certificate.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper hand writing of him the said clerk: that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

Seal Supreme Court of the State of Louisiana.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this seventh day of January *anno Domini* one thousand nine hundred and four, and in the one hundred and twenty-eighth year of the Independence of the United States of America.

FRANCIS T. NICHOLLS,
Chief Justice.

117 *Clerk's Certificate Legalizing Signature.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the Honorable Francis Tillou Nicholls, is and was at the time of signing the foregoing document, chief justice of our supreme court; and that the signature affixed to the same is in the proper handwriting of him, the said chief justice.

Seal Supreme Court of the State of Louisiana.

In faith whereof, I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this 7th day of January, *anno Domini*, one thousand nine hundred and four.

T. McC. HYMAN, *Clerk.*

118 Supreme Court of the United States, October Term.

NEW ORLEANS GAS LIGHT CO., Plaintiff in Error,
vs.
THE DRAINAGE COMMISSION OF NEW ORLEANS,
Defendant in Error.
No. 172.

It is hereby agreed by and between the undersigned respectively counsel for plaintiff and defendant in error in the above numbered and entitled cause pending in the Supreme Court of the United States that the clerk of said court omit in printing the record in said cause, that is to say from said printed record, the following documents to-wit:

The large printed document offered by the defendant in error, being "specifications for the construction of a system of drainage for the city of New Orleans, Louisiana," the consent not to print said document in the record being made without prejudice to the right of either party to use or refer to same as part of the record in the Supreme Court of the United States.

CHAS. F. BUCK,
For Pl'ff in Error, &
OMER VILLERÉ,
Special Counsel.

SAM'L L. GILMORE,
City Attorney for Defendant in Error.

119 (Endorsed:) File No. 19195. Supreme Court U. S. October term, 1904 Term No. 172 The New Orleans Gas Light Co., P. E., *vs.* The Drainage Commission of N. O. *et al.* Stipulation to omit part of record in printing. Filed July 14, 1904.

Endorsed on cover: File No. 19,195. Louisiana supreme court. Term No. 172. The New Orleans Gas Light Company, plaintiff in error, *vs.* The Drainage Commission of New Orleans, the Sewerage and Water Board, successor, substituted. Filed January 12", 1904. File No. 19,195.